



# भारत का राजपत्र The Gazette of India

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नई दिल्ली, शनिवार, मार्च 2, 1985/ फाल्गुन 11, 1906

No. 4]

NEW DELHI, SATURDAY, MARCH 2, 1985/PHALGUNA 11, 1906

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में  
रखा जा सके

Separate paging is given to this Part in order that it may be filed as a separate  
compilation

## भाग II—खण्ड 3—उप-खण्ड (iii)

### PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों को छोड़ कर) केन्द्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएं  
Orders and Notifications issued by Central Authorities (other than Administrations of  
Union Territories).

#### भारत निर्वाचन आयोग

आदेश

नई दिल्ली, 31 जनवरी, 1985

अ. अ. 6—मई 1980 में उत्तर प्रदेश विधान सभा के लिए हुए साधारण निर्वाचन में 403-छपरोली निर्वाचन क्षेत्र से निर्वाचन लड़ने वाले एक अभ्यर्थी श्री वेद पाल सिंह 66-न्यू मोहनपुरी कालोनी, मेरठ (उत्तर प्रदेश) को लोक प्रतिनिधित्व अधिनियम, 1951 की धारा 10क के अधीन अपना निर्वाचन व्ययों का लेखा उक्त अधिनियम तथा उसके अधीन बनाए गए नियमों द्वारा अपेक्षित रीति से दाखिल करने में असफल रहने के कारण इस आयोग के तारीख 8 फरवरी, 1982 के आदेश संख्या 76/उ.प्र.-वि.स./80(2) द्वारा निरुद्ध घोषित कर दिया गया था, और उक्त श्री वेद पाल सिंह ने निर्वाचन आयोग के सम्मुख उस पर लागू निरुद्धता को हटाने के लिए आवेदन दिया है जिसमें उमने विधि द्वारा अपेक्षित रीति से लेखा दाखिल करने में अपनी असफलता के लिए कारण बताए हैं,

और निर्वाचन आयोग का उस आवेदन में विधि द्वारा अपेक्षित निर्वाचन व्ययों का लेखा दाखिल करने में अपनी असफलता के लिए बताई गई परिस्थितियों को ध्यान में रखते हुए, यह मत है कि इसके तारीख 8 फरवरी, 1982 के पहले आदेश में पुनरीक्षण किया जाना चाहिए,

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अतः अब उक्त अधिनियम की धारा 11 द्वारा पदस्थ शक्तियों का प्रयोग करते हुए निर्वाचन आयोग एतद्वारा श्री वेदपाल सिंह पर लागू उपर्युक्त निरुद्धता की अवधि को घटाकर उतनी करता है जो वे भोग चुके हैं, और उनकी निरुद्धता को तारीख 31 जनवरी, 1985 से हटाता है।

[संख्या उ.प्र.-वि.स./403/80(खंड-II)]

आदेश से,

जे.पी. चौधरी, अवर सचिव

ELECTION COMMISSION OF INDIA  
ORDER

New Delhi, the 31st January, 1985

O.N. 6.—Whereas Shri Ved Pal Singh, 66-New Mohan-puri Colony, Meerut (Uttar Pradesh), who was a contesting candidate for general election to the Uttar Pradesh Legislative Assembly held in May, 1980 from 403-Chhaprauli Constituency, was disqualified by the Election Commission vide its order No. 76/UP-LA/80(2), dated the 8th February, 1982 under section 10A of the Representation of the People Act, 1951 for a period of three years from the date of that order, for his failure to lodge any account of election expenses under the said Act and the rules made thereunder;

(11)

And, whereas, the said Shri Ved Pal Singh, has submitted a petition before the Election Commission praying for the removal of the disqualification imposed on him giving reasons for his failure to lodge any account of election expenses;

And, whereas, the Election Commission, having taken into account the circumstances explained in the said petition for his failure to lodge any account, is of the view that the earlier order of 8th February, 1982 merits revision;

Now, therefore, in exercise of the powers conferred by section 11 of the said Act, the Election Commission hereby reduces the aforesaid period of disqualification imposed on Shri Ved Pal Singh to the period of disqualification already undergone and further removes his disqualification w.e.f the 31st January, 1985.

[No. UP-LA/403/80(Vol.II)]

By order,

J. C. CHAUDHARY, Under Secy.

नई दिल्ली, 6 फरवरी, 1985

आ.अ. 7.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में निर्वाचन आयोग, 1980 की निर्वाचन अर्जी सं. 5 में दिया गया उच्च न्यायालय पटना का तारीख 26-11-1984 का निर्णय प्रकाशित करता है ।

[मं. 82/बिहार-मो.म./ (5/80)/85]

New Delhi, the 6th February, 1985

O.N. 7.—In pursuance of section 106 of the Representation of the People Act, 1951, (43 of 1951) the Election Commission hereby publishes the order of the High Court of Judicature at Patna dated the 26th November, 1984, in Election Petition No. 5 of 1980.

[No. 82/BR-HP/(5/80)/85]

#### ELECTION PETITION NO. 5 OF 1980

In the matter of an application under Sections 80, 80A and 81 of the Representation of the People Act, 1951.

Mahabir Paswan Petitioner

Versus

Shri Jagjiwan Ram and others Respondents

For the petitioner —Messrs Shyam Nandan Pd. Sharma and Amarendra Kumar Singh.

For the respondent No. 1—Messrs K. P. Verma (Advocate General), Sharvendra Kumar Verma and Prabhakar Kumar Verma.

#### PRESENT :

The Hon'ble Mr. Justice Shivanugrah Narain.

SHIVANUGRAH NARAIN, J.—In this election petition the petitioner, Mahabir Paswan, a defeated candidate, prays in essence for a declaration that the election of Shri Jagjiwan Ram, respondent No. 1 to this election petition, to the House of People in 1980 from 33 (Scheduled Castes) Sasaram Parliamentary Constituency is void and the petitioner Mahabir Paswan be declared elected in his place. Respondent No. 7 is Sri Sheo Nandan Paswan, another contesting candidate, and respondent Nos 2 to 6 are the other contesting candidates. The poll was held on 6-1-1980 and the result of the election aforesaid was declared on 8-1-1980. Respondent No. 1, Sri Jagjiwan Ram, was declared elected, having secured 1,69,193 votes and the petitioner, Mahabir Paswan and respondent No. 7, Sri Sheo Nandan Paswan, secured the next highest votes, namely 1,10,019 and 80,516

2. The aforesaid Sasaram Parliamentary Constituency consists of six Assembly Constituencies, namely, (i) Ramgarh, (ii) Mohania, (iii) Shabnui, (iv) Champur, (v) Chenari and (vi) Sasaram.

3. The grounds on which the election of respondent No. 1 has been impugned in the election petition may be divided into two categories. The first broad category is commission of corrupt practice by the respondent No. 1 or his Election Agent or by his Agents and workers with his consent falling under section 100(1)(b) of the Representation of the People Act, 1951 (hereinafter called the 'Act'). The second category is that the result of the election has been materially affected by (a) improper acceptance of void and invalid votes in favour of respondent No. 1, and (b) non-compliance with the provisions of the Constitution, the Act and the Rules and Orders under the Act which fall under sub-clauses (iii) and (iv) of section 100(1)(d) of the Act. In the election petition, the following species of corrupt practices were alleged, namely, (i) the corrupt practice of bribery, (ii) the corrupt practice of undue influence, (iii) the corrupt practice of appeal for votes on the ground of caste or community, (iv) the corrupt practice of promotion of feelings of hatred and enmity between the difference classes of citizens, (v) the corrupt practice of publication of false statement of fact prejudicial to the prospects of the election of the petitioner in relation to his candidature or withdrawal, (vi) the corrupt practice of incurring election expenses in excess of the maximum amount prescribed, and (vii) the corrupt practice of obtaining the assistance of Gazetted Officers or Magistrates for the furtherance of the prospects of his election which fall under sub-section (1), (2), (3), (3A), (4), (6), (7) respectively of section 123 of the Act. The particulars of the allegations would be set out later on.

According to the averments in the election petition, if the invalid votes secured by respondent No. 1 were excluded, the petitioner would have been elected defeating respondent No. 1 by a margin of one lac votes.

4. Only respondent No. 1 appeared and filed a written statement. In the written statement, a respondent No. 1 (hereinafter called the 'respondent') denied the allegations of commission of corrupt practices and also the allegation that the result of the election had been materially affected by the reception in his favour of void or invalid votes, or by the contravention of the provisions of the Constitution, the Act or the Rules and Orders made under the Act. The respondent also raised a plea that the election petition was not maintainable and was fit to be dismissed because of the non-compliance with the provisions of sections 81, 82, 83 and 117 of the Act and that it was barred by limitation. It was stated that material facts and full particulars of the commission of corrupt practices had not been furnished and the allegations were vague and had not been properly verified.

5. On the pleadings, the following issues were framed in this case :—

1. Is the Election Petition maintainable?
2. Is the Election Petition fit to be dismissed because of the non-compliance of Sections 81, 82 and 117 of the Representation of People Act, 1951?
3. Has the petitioner furnished material facts and full particulars of these allegations and are the allegations supported by proper verification and affidavits? If not, is the Election Petition fit to be dismissed because of non-compliance of mandatory provisions of section 83 of the Representation of the People Act, 1951?
4. Whether the respondent No. 1 procured the assistance of the gazetted officer, namely, the Returning Officer for the furtherance of the success of his election and committed the corrupt practice as contemplated by section 123(7) of the Representation of the People Act, 1951 as alleged in the Election Petition and the relevant Schedule? If so, is the election of the respondent No. 1 void?

5. Whether the respondent No. 1, his agent, workers and supporters with his consent committed the corrupt practice as contemplated by Section 123(4) of the Representation of the People Act, 1951 as alleged in the election petition and its relevant Schedules and Annexures? If so, is the election of respondent No. 1 void?
  6. Whether the respondent No. 1, his agents, workers and supporters with the consent of respondent No. 1 committed corrupt practice of bribery as alleged in the election petition and the relevant Schedule?
  7. Whether the respondent No. 1 has incurred expenditure including his authorised expenditure beyond the prescribed limit in the impugned election? If so has he contravened the mandatory provisions of section 77 of the Representation of the People Act, 1951? If so, is he guilty of commission of corrupt practice as contemplated by section 123(6) of the Representation of the People Act, 1951?
  8. Whether the respondent No. 1, his agents, workers and supporters with the consent of respondent No. 1 committed the corrupt practice of undue influence in the impugned election as alleged in the election petition and the relevant schedules and annexure?
  9. Whether the counting and scrutiny of the ballot papers regarding the impugned election was done improperly and not in accordance with law? If so, has it materially affected the result of the election?
  10. Whether more than 50000 ballot papers which did not bear the seal of the concerned polling stations as well as the signature of the Presiding Officer of concerned polling station were illegally counted in favour of respondent No. 1 as alleged in the election petition? If so, has it materially affected the result of the election?
  11. Whether there was non-compliance of the provision of the Constitution of India read with section 25 of the Representation of the People Act, 1951 and the rules and orders made thereunder as alleged? If so, has it materially affected the result of the election?
  12. Is the petitioner or respondent No. 1 entitled to any other relief or reliefs?
6. By order No. 50 dated 5th July, 1983, issue Nos. 2 and 3 were heard as preliminary issues prior to the examination of the witnesses on behalf of the respondent and those two issues were decided by order No. 59 dated 20-7-1983. By that order, issue No. 2 was answered in the negative against respondent No. 1 and in favour of the election petitioner. So far as issue No. 3 is concerned, it was held that the allegations in the election petition were supported by proper verifications and affidavits, that material facts in respect of the allegations relating to the charge of corrupt practice under section 123 (7) and of the charge of appeal on the ground of caste specified in section 123(3) and of the corrupt practice of promotion of feeling of hatred and enmity specified in section 123(3A) and the charge of bribery by offer of gratification of articles specified in paragraph 19 as distinguished from gratification in the form of gifts of money had not been stated in the petition. But as material facts and full particulars and other grounds for voiding the election had been furnished, the election petition could not be dismissed in its entirety. The allegations, however, relating to the charges of corrupt practice in respect of which material facts had not been stated were fit to be deleted and, accordingly, the averments in paragraphs 16 and 19 and the allegations in paragraphs 12, 13 and 14, so far as they relate to the charge of corrupt practice under section 123(7) were directed to be struck out.
7. In view of the aforesaid findings regarding absence of material facts in respect of the corrupt practice of procuring the assistance of Gazetted Officers, issue No. 4 must be and

is, accordingly, deleted. Therefore, now only Issue Nos. 1 and 5 to 12 survive for decision.

#### Issue No. 1

8. In view of the order on issue Nos. 2 and 3, the learned Advocate General appearing for the respondent does not press issue No. 1 and it is, accordingly, answered in the affirmative.

#### Issue No. 7

9. I would next take for consideration issue No. 7 as it can easily be disposed of. This raises a question of commission of corrupt practice falling under section 123(6) of the Act. Now, the corrupt practice under section 123(6) of the Act consists in incurring or authorising of expenditure in contravention of section 77 of the Act. It consists in incurring or authorising of expenditure in excess of the prescribed limit and is related to sub-section (3) of Section 77 of the Act. See the decision reported in A.I.R. 1972 Supreme Court 608. Further, to prove a charge of corrupt practice falling under section 123(6) of the Act, it is not sufficient to prove that expenses incurred in connection with the election of the returned candidate were beyond the prescribed limit. It must also be proved that the excess expenses were incurred either by the candidate himself or were authorised by him. Mere knowledge of the candidate of the expenses is not enough. See the decision reported in A.I.R. 1971 Supreme Court 1295. It is not enough to prove the expense of money by a candidate's party or friends or relations. It must further be proved that it was authorised by the candidate. Authorisation means acceptance of the responsibility for the expenditure. As observed by Ray, C.J. in *Smt. Indira Gandhi's case* (A.I.R. 1975 Supreme Court 2299 at 2329), "in order to constitute authorisation, the effect must be that the authority must carry with it the right of reimbursement". Where vehicles are lent gratuitously by friends or relations, it cannot be said that any expenditure was incurred or authorised by the candidate. See the decision reported in 17 Election Law Reports 243 at pages 256-57. It is in the light of the aforesaid principle that this issue must be answered.

10. According to the case of the election petitioner, the respondent spent more than one crore of rupees in the impugned election. According to the averments in paragraph 20 of the election petition, the respondent spent Rs. 1,00,000.00. In maintaining election camp offices, Rs. 5,00,000 over petrol etc. of 200 vehicles which he used during his election campaign. The particulars of the expenses are given in Schedule VII to the election petition. In the Schedule, the figure for maintaining the election camp offices is given as Rs. 1,50,000, though in paragraph 20 of the election petition, the amount is stated as Rs. 1,00,000.00. Besides, the expenditure over fuel, meaning petrol etc. is given as Rs. 5,00,000.00. The other expenses incurred are thus stated "Money spent on hire of the vehicles Rs. 25,00,000". Expenses over driver, helper, etc. moving in the jeep and canvassing are Rs. 25,00,000.00, expenditure over leaflets, posters, etc. is Rs. 50,000.00 and loud-speaker and mike Rs. 50,000.00, while expenditure over public meeting Rs. 25,000.00 money paid to important persons for help Rs. 35,00,000.00, donations to public institutions Rs. 15,00,000.00 and save it other items. Money spent over purchases of blankets, Daris by-cycles, patromaxes was Rs. 2,50,000.00, Rs. 1,20,000.00 Rs. 30,000.00 and Rs. 35,000.00 respectively. According to the respondent the total expenditure incurred by him over the election was Rs. 2,573.74 only as it appears from the return of election expenses. (Ext. C) filed by him to which are annexed several vouchers.

11. The evidence adduced in support of the case of excess expenditure may be divided into two categories: (i) money and articles offered by way of bribe, and (ii) the use of more than 200 vehicles on behalf of the respondent in the election. So far as the money or the articles offered by way of bribe is concerned, there is vague and general allegation of distribution of money and articles. The learned Advocate for the petitioner was unable to contend that there is evidence regarding the total amount spent in this fashion which would justify the finding that the amount

spent in the election by the respondent was over the prescribed limit of Rs. 1,00,000.00. I, therefore, need not discuss the evidence on this point.

12. The nature of the other evidence adduced appears from the following statements made by the election petitioner Mahabir Paswan (P.W. 1) in his deposition "Jaggiwan Babu must have spent crores of rupees in this election. More than 200 vehicles were used by Jaggiwan Babu in this election". Cross-examined on the point, the petitioner (P.W. 1) admitted that he did not have any document proving the aforesaid expenditure. He could not give the registration numbers of the 200 vehicles. He further admitted that he could not say how many of the aforesaid 200 vehicles were obtained by the supporters of Jaggiwan Babu and how many of them had been obtained by Jaggiwan Babu himself. He further stated that he could not tell the name of the proprietor or the owner of any of these vehicles used in the election campaign of Jaggiwan Babu and added that those vehicles had come from Delhi, Calcutta, Kanpur, etc. On his evidence, it is difficult to hold affirmatively that Jaggiwan Babu incurred or authorised the expenditure over the hire or propulsion of the vehicles even if his evidence is accepted that a large number of vehicles were used in the election on behalf of Jaggiwan Babu. In the evidence of the other witnesses examined on behalf of the petitioner also, the learned counsel for the petitioner is unable to point out any evidence beyond the general allegation to the effect that a large number of vehicles were being used in the election campaign on behalf of Jaggiwan Babu. Sri Jaggiwan Ram who deposed as R.W. 65 specifically denied the allegation that more than 200 vehicles were used in the election campaign or that his expenditure at the election exceeded the permissible limit. In this state of evidence, the charge of authorising or incurring expenditure in excess of the prescribed limit clearly fails. Issue No. 7 must be and is, accordingly, answered in the negative.

Issue No. 6

13. In view of order No. 50 dated 5-7-1983, to which reference has already been made, we are now concerned only with the allegation of bribery in which the gratification consists of gifts of money. The allegations are contained in paragraph 18 of the election petition, according to which respondent No. 1 himself offered money to prominent members of different communities and requested them to support him in the said election and several persons accepted money. It is stated in paragraph 13 that the money was offered at Bhabua Inspection Bungalow and Sasaram Circuit House and at other places. But in Schedule V, which purports to give full particulars of the corrupt practice of bribery, as referred to in paragraph 18 (paragraph 17 in Schedule V is obviously a mistake for paragraph 18) of the petition, the only places mentioned are Bhabua Inspection Bungalow and Sasaram Inspection Bungalow/Circuit House, and the evidence adduced by the petitioner is also confined to the payment of money at these two places. According to Schedule V, the corrupt practice of bribery was committed at both these places on 4-1-1980 and 5-1-1980. The names of some of the persons to whom money was paid at the two places is mentioned in Schedule V. Understandably, there is no documentary evidence in support of this corrupt practice. The witnesses who deposed about this corrupt practice of bribery may be divided into two categories: (i) those who spoke about the bribery at Sasaram Circuit House, and (ii) those who spoke about the bribery at Bhabua Inspection Bungalow. P.Ws. 2, 4, 18 and 31 are the witnesses who belong to the first category. Shiv Shankar Dwivedi (P.W. 2) deposed the Sasaram Circuit House was situated in front of his house, and when he was asked specifically "Did you or did you not see money distributed at the Circuit House", deposed that he had seen people coming from the Circuit House with money and as he found that they were arguing among themselves, he asked them as to what was the matter, and then one of them told that though he had done more work for Jaggiwan Babu, he had been paid less than another person who had done little work and was merely sitting at his home. Dasrath Dubey (P.W. 18) deposed that he had gone to the Circuit House two days prior to the date of the poll and saw a small crowd in the Circuit House in Room No. 1, in which Jaggiwan Babu was staying, and noticed people carrying envelopes and saw them

coming out of the Circuit House and saw some of them taking out currency notes out of those envelopes. He names Badri Narain Choubey, Hari Singh, Ashutosh Bahadur Singh, Tilak Nath Pandey, Nathuni Singh and Shri Bhagwan Singh among them. These people are among some of the persons named in Schedule V as persons to whom money had been paid. P.W. 4, Munna Mian, who claims to have an Auto work-shop in front of the Sasaram Circuit House, deposed that he used to go to the Circuit House for repairing vehicles, and one day he had seen a great crowd at the Circuit House where Jaggiwan Babu was also staying and he heard two or three persons asking how much money they had received, and he himself put that question to one of them, and that person told him that the money was being given not for keeping but for distribution. He further added that one Hari Singh came and asked him to repair his vehicle and told him that he had to go immediately to distribute money. Similar statement was made by one Bhagwan Singh. Hari Singh and Bhagwan Singh have not been examined and that part of the evidence is clearly inadmissible. Similarly, the evidence that the money had been given for distribution is also hearsay. The evidence of P.W. 4 is, therefore, to the effect that he had seen people in the Circuit House talking how much they had received and can merely corroborate other testimony. P.W. 31 Deobans Tiwary deposed that he was a journalist and had gone to the Circuit House on 4-1-1980 in the evening and saw a crowd there and Jaggiwan Babu asked him to come the day after. He further stated that he saw people coming with envelopes. He named three of them and he further deposed that the envelopes were handed over to them by Jaggiwan Babu. His further evidence is that he met Jaggiwan Babu the next day, i.e. on 5th January, 1980, at 7 or 8 A.M. and when he asked Jaggiwan Babu as to why he was distributing money, Jaggiwan Babu said "Tiwariji, you know that I have always distributed money for being elected. We have to do these things for being elected. Why talk about it." I may state that Mahabir Paswan (P.W. 1) also deposed generally about the distribution of money, but his evidence is clearly inadmissible, being hearsay.

14. As against this, Shri Jaggiwan Ram deposed as R.W. 65 and maintained that he reached Sasaram Inspection Bungalow after the mid-night of 4-1-1980 and he left the place in the morning of 5-1-1980, and further that as he had only one room in the Circuit House in which his wife was also staying, he met people outside the room. He further stated that he came back to Sasaram only in the night of 5-1-1980. This evidence of the respondent is supported by R.W. 67, a member of the Bihar Legislative Council who was working for Jaggiwan Babu. The evidence to the effect that Jaggiwan Babu was not in the Circuit House on 4-1-1980 or 5-1-1980 at the time alleged was objected to as beyond pleadings because in the written statement, it had not been specifically stated therein that Jaggiwan Babu was not at all present in Sasaram Circuit House or Bhabua Inspection Bungalow at the time when he is alleged to have distributed money. But in my opinion, this evidence cannot be shut out when the allegation was specifically denied. Of course, the circumstance that it was not stated so in the petition statement may be a ground for disproving this part of the testimony. Upendra Kumar Singh (R.W.30) and Ramna P.I. Singh (R.W.32) also gave evidence to the same effect.

15. Now it is well settled that the charge of corrupt practice must be proved beyond doubt by clear and cogent evidence. Both P. Ws. 2 and 18 are highly partisan witnesses, both being important workers of Mahabir Paswan at the election though P.W. 18 only saw envelopes being carried by people who came out of the Circuit House, P.W.2 goes to the extent of saying that he had seen people coming out with money. One may not go about exhibiting money, especially when the money has been given by way of bribe, as is the case of the petitioner. So far as P. W. 2, Shiv Shankar Dwivedi, is concerned, he according to the particulars is one of the persons to whom bribe money had been paid, but he does not even depose that any offer of bribe money was made to him P.W. 2 is a member of the Rohtas District Committee of the Congress (I) Party, whose candidate the petitioner was and the election office of the petitioner

was located in his house. But Dasthath Dubey (P.W. 18) is presently the Secretary of the Rohtas Zila Congress Committee (1) and he worked for Mahabir Paswan, and according to him, on hearing propaganda about the retirement of Mahabir Paswan, he immediately gave the report to the President of the District (1) Committee. Still strangely enough, no report about this distribution of money and attempt to buy voters was made to any of the authority, either by P.W. 2 or by P.W. 18 or any one on behalf of the petitioner. This makes the story rather suspicious. So far as P.W. 31 is concerned, obviously, he is not a person of the camp of Jagjiwan Babu for he has to be deposed about to offer of bribe money by Jagjiwan Babu. According to his evidence, he was a journalist, being a Press correspondent of the Pradeep and the All India Radio. It seems highly improbable that Sri Jagjiwan Ram would admit before such a journalist about the commission by him of the corrupt practice of bribe. Further, he admitted that he had sent no reports about the election in Sasaram Constituency to the Pradeep. He maintained that others were covering the election for the Pradeep. He was constrained to admit that he had not been prohibited from sending reports to the Pradeep about the election. When pressed further, he admitted that he did not remember if he had sent any report to the Pradeep after the election either. Though in his examination-in-chief he attempted to make out that Hari Singh Yadav, Badri Narain Choubey and Tilakdhari Pandey were some of the persons who had come out with envelopes, in cross-examination he admitted that these were the only three people whom he saw coming out with envelopes. Further, his evidence that Hari Singh took out the money from the envelope and counted it is also highly improbable. I am not inclined, therefore, to accept the evidence regarding the distribution of money. The payment of money at Sasaram Circuit House is, therefore, not proved.

16. To prove his case of the commission of the corrupt practice of bribery at Bhabua, the petitioner relies on the testimony of Ram Naresb Paswan alias Naresb Paswan (P.W. 15), Bhagwati Tiwari (P.W. 28) and Shyam Narain Pandey (P.W. 17). P.W. 15 says that two days prior to the date of poll, Afsar Khan Mukhiya took him to Jagjiwan Babu who was staying at the Bhabua Circuit House and Jagjiwan Babu requested him to procure votes for him and then Jagjiwan Babu, in spite of his protest, put in an envelope containing Rs. 1,000 into his pocket. Bhagwati Tiwari (P.W. 28), the President of the Bhabua Block Congress(1) Committee deposed that he was working for the Congress(1) candidate, that is to say, the petitioner in the 1980 election to the Parliament and while passing through the road, he saw a crowd at the Bhabua Dakbungalow, he went inside the Dakbungalow and he saw persons coming out with envelopes from a room in the Dakbungalow in which Jagjiwan Babu was staying, and among them, he recognised Naresb Paswan (P.W. 15), Bhanu Pratap Singh, Sheo Parichha Singh and Afsar Khan, and he reported these facts to Shyam Narain Pandey. Shyam Narain Pandey deposed as P.W. 17 and stated, among other things, that Bhagwati Tiwari (P.W. 28) had told him that on the 4th of January 1980, Jagjiwan Babu was at the Dakbungalow at Bhabua and his workers had collected there and each of the workers was handed over an envelope. He further stated that this fact was reported by Bhagwati Tiwari to him after the election. Even if this evidence were to be accepted, it would be insufficient to prove the commission of the corrupt practice of bribery. At best, the evidence might prove the payment of money by Sri Jagjiwan Ram to his supporters for inducing people to vote for him in the election. P.W. 28 does not even specifically say that envelopes which he had seen people carrying contained money. Of course, he does not say what was the object with which the money was paid. P.W. 15, of course, speaks of a request by Jagjiwan Babu to procure votes for him. So he merely proves payment of money by Jagjiwan Babu to procure or secure some votes in his favour. Now it is well settled that mere payment of any gratification to a third person for securing or procuring some votes in favour of a particular candidate, without the establishment of nexus between the money and the inducement to the voters, is not sufficient to prove that the voter is indirectly induced on account of the payment of gratification to a third person. The fact of payment must induce the voters. It is not enough that the third person induces the voter. See the decisions of the Supreme Court reported in A.I.R. 1975 Supreme Court 1634 and A.I.R. 1976 Supreme Court 27.

17. But in my opinion, even the fact of payment of money to P.W. 15 or the circumstance of the people coming out of the room in the Bhabua Dakbungalow allegedly occupied by Sri Jagjiwan Ram with envelopes, probably containing money, is not established beyond doubt. The respondent (R.W. 65) has not only denied the offer of gratification, he has also denied the fact of his being present at Bhabua Inspection Bungalow either on 4-1 or 5-1-1980. I have already held that though it was not specifically stated in the written statement, the evidence to the effect that Sri Jagjiwan Babu was no present either at Sasaram Circuit House or at Bhabua Inspection Bungalow on the dates he is alleged to have distributed money cannot be shut out. The denial of Jagjiwan Babu about his presence at Bhabua Dakbungalow is corroborated by the evidence of R.W. 46, who as the Secretary of Bhabua Town Janta Party, is a competent, though partisan witness. R.W. 38 also deposed to the same effect as R.W. 46, but even if we leave aside this evidence as incompetent because he is a person who qualifies as a competent witness only on the ground that he goes to perform Puja in the Devi Mandir adjacent to the Dakbungalow at Bhabua, the evidence of P.Ws. 15 and 28 is not such as to be preferred to the testimony of R.W. 65 and R.W. 46, much less is that evidence sufficient to falsify the denial of R.W. 65. P.W. 28, according to his own evidence, was actively campaigning during the election for the petitioner Mahabir Paswan, and as the President of the Bhabua Block Congress(1) Committee, he was a responsible and independent worker. Admittedly he did not lodge any information before any authority about the distribution of money in envelopes which he had witnessed. The story told by him also is improbable. People who receive bribe money do not go about publicly exhibiting the envelope in which money is kept, specially when one of the envelopes, as is the evidence of P.W. 15, contained a sum of Rs. 1,000.

17A. The evidence of P.W. 45 also does not inspire confidence. According to P.W. 15, he does not belong nor ever belonged to any political party and was never a public worker nor ever solicited votes. In these circumstances, it seems incredible that a sum of Rs. 1,000 would be offered to him by Sri Jagjiwan Ram for procuring votes for him, as he would like us to believe. In his examination-in-chief, as I have already stated, he deposed that Afsar Khan had taken him to Bhabua Dakbungalow, which he calls Circuit House. According to his evidence, Om Parichha Singh, M.L.A. and Ramadhar Giri of Bhabua were present at the time he had gone to the Circuit House and he added that Afsar Khan had moved away which is suggestive that Om Parichha Singh and Ramadhar Giri were present at the time he had met Jagjiwan Babu. In the cross-examination also, he admitted that a large number of persons including Moinuddin, Ramadhar Giri and Tuleswar Roy were present at the time he had met Jagjiwan Babu. But when a specific question was put to him, he maintained that no one else was present at the time of his talk with Jagjiwan Babu or at the time when Jagjiwan Babu handed over the envelope to him. He does not say where those people had moved away. Further, on the question what he did with the money, P.W. 15 completely broke down in the cross-examination. At first he stated that part of the money he had received from Jagjiwan Babu was utilised by him for his household expenses and part of it was distributed by him to other persons. Then he stated that he had given some of that money to his children. Then he named his son Hanuman as the person to whom he had given some of that money. Immediately thereafter he said "I gave the entire money to Hanuman". He again amended that statement by saying that he distributed Rs. 500/- among some other persons including Bhageru Bind. I would place no reliance on his evidence, notwithstanding that his story is corroborated by Bhagwati Tiwari (P.W. 28). The alleged statement of Bhagwati Tiwari (P.W. 28) to Shyam Narain Pandey (P.W. 17) regarding people coming out with envelopes from Bhabua Dakbungalow cannot be used to corroborate the evidence of Bhagwati Tiwari (P.W. 28) because the statement was made after the election and, therefore, not at or about the time when the incident took place. It must, therefore, be held that the petitioner has failed to prove the commission of corrupt practice of bribery by the respondent at Bhabua Inspection Bungalow also. Issue No. 6 must, therefore, be answered in the negative.

Issue No. 5

18. The averments on which this issue has been raised are contained in paragraph 15 of the election petition. According to the petitioner, just a few days before the date of the poll, respondent No. 1 gained over some of the workers of Sheonandan Paswan, the Lok Dal candidate, and through them he got a false propaganda that the petitioner retired from the contest in favour of Sheonandan Paswan made and that he gained Muslim workers of respondent No. 1 distributed some Urdu pamphlets in this regard. It is further stated in the petition that the moment the petitioner came to know about this false propaganda, he lodged a Sanha at the Sasaram Police Station, which was recorded as a Sanha, that is to say, a station diary entry No. 67 dated 4-1-1980. Copies of the pamphlet and the station diary entry respectively are annexed to the petition as Annexures 3 and 3/A respectively. Schedule II gives particulars of this corrupt practice and names, besides the respondent, Istafak Ali Khan, Mohammad Bartalla and Sachidanand Singh as the persons who committed the corrupt practice and gave the date, time and place of the commission of the corrupt practice as 4 P.M. on 4-1-1980 at Sasaram. It also gives the names of the persons on whom the corrupt practice was committed.

19. There is no documentary evidence in support of this allegation. The pamphlet has not been exhibited. Further, Annexure 3/A, which is said to be a copy of the pamphlet, says nothing about the withdrawal of the petitioner from the election contest. The station diary entry aforesaid also has not been exhibited, though it was called for, and a true copy was sent with a note that the original will be produced later. The learned counsel for the petitioner stated that the factum of the station diary entry and its contents stand admitted by the respondent, and he referred to the statement in paragraph 17 of the written statement in which reference is made to the omission of the name of the respondent, in Annexure 3/A, the copy of the station diary entry. Even assuming that the factum and contents of the station diary entry are admitted, I do not think that the averments in the station diary entry Ext. 3/A support the case of the petitioner regarding the false propaganda about his withdrawal made by or on behalf of the respondent. Annexure 3/A, purports to be a copy of the station diary entry No. 67 dated 4-1-1980 of Sasaram Police Station and purports to be a statement of Ali Hussain, General Secretary, District Youth Congress(I). The information, freely translated into English, runs thus :

"It is humbly stated that today, that is to say, 4-1-1980, at about 4, Istafak Ali Khan, son of Ahmad Khan, Bartalla, Sasaram, and Duzuk Kazipura were going about Sasaram on rickshaw spreading the rumour that Mahabir Paswan had withdrawn in favour of Sheo Nandan Paswan and had also distributed some posters, a copy of which was being handed over."

As will be seen, the persons named in Annexure 3/A are two—Istafak Ali Khan and Duzuk Kazipura. It is not stated therein that they are workers of the Lok Dal who were gained over by Jagjiwan Ram nor it is stated that they were spreading this rumour at the instance of the respondent or his agents. Prima facie, the person likely to profit from such a rumour would be Sheonandan Paswan in whose favour Mahabir Paswan was rumoured to have withdrawn, and not Sri Jagjiwan Ram. There is not a whisper about the involvement of Sri Jagjiwan Ram or his workers or supporters in spreading of the rumour about the withdrawal of Mahabir Paswan. Moreover, no other information was given to the court and there is no contemporaneous document supporting the case made out in Court by the petitioner. The case of the petitioner rests only on oral evidence.

20. Though according to the averments in the petition, the propaganda regarding the withdrawal was made in the entire Parliamentary Constituency, the learned counsel for the petitioner has pressed this allegation only as regards the propaganda made in Sasaram town. Before I proceed to consider the evidence on the point, I must point out that the story that Sri Jagjiwan Ram got this propaganda made is

highly improbable. The propaganda was that Mahabir paswan had withdrawn in favour of Sheonandan Paswan. Prima facie, such a propaganda would help Sheonandan Paswan and not Sri Jagjiwan Ram, specially as Mahabir Paswan (P.W.1), as admitted by him, belongs to the same caste of 'Paswan' as Sheonandan Paswan. We may not ignore the fact that the voting in this part of the country is influenced also by consideration of caste. The learned counsel for the petitioner argued that Sri Jagjiwan Ram was very much interested in seeing that votes did not go to Mahabir Paswan, who was his most dangerous candidate, as is clear from the voting figure. But Sheonandan Paswan, as the learned Advocate General rightly points out, was not a non entity. He was a candidate of the All India Party and he secured over 80,000 votes, though less than the total secured by the petitioner. Though the working of the mind of a particular candidate may not be known with certainty, it certainly seems improbable that Sri Jagjiwan Ram could propagate such a rumour which would help Sheonandan Paswan who was one of his two main contestants. Further the absence of any indication in the alleged station diary entry that the aforesaid propaganda was being made at the instance of Jagjiwan Babu or that he had won over some workers of Lok Dal lends some support to the argument on behalf of the respondent that taking advantage of the aforesaid station diary entry regarding the rumour of withdrawal spread by some persons, the petitioner has fabricated a case, that those workers were the workers of the Lok Dal who had been gained over by Jagjiwan Babu and that the propaganda was got made by Jagjiwan Babu. The petitioner's case regarding this corrupt practice cannot, therefore, be held to be established beyond doubt.....has to be established beyond doubt.....only if the evidence in its support is of a cogent and unimpeachable character.

21. The witnesses on whose evidence the learned counsel for the petitioner relies to prove this corrupt practice are P.W.s 1, 2, 4, 11, 12, 13, 19, 21 and 36. These witnesses may be divided into two categories, namely, (i) those who claim to have identified some of the persons who were carrying on the propaganda and (ii) those who merely stated that some workers of Jagjiwan Babu were carrying on the propaganda. In the first category are Ali Hussain (P.W.11), Dasrath Dubey (P.W.18), Durga Pd. Singh (P.W.21) and Md. Yakub (P.W.36). All these witnesses are highly partisan as they had actively worked for the petitioner Mahabir Paswan in the election or had the same political affiliation. Ali Hussain (P.W.11) admittedly worked for Mahabir Paswan in that election and in 1980 he was the President of the Minority Cell of the Rohtas District Congress(I) Committee. According to his evidence, he was one of the persons who had reported the propaganda to Mahabir Paswan and he was the person asked by Mahabir Paswan to lodge the station diary entry which, according to his evidence, was S.D.E. No. 67 dated 4-1-1980 of Sasaram Police Station.

Dasrath Dubey (P.W.18) is the Secretary of the Rohtas District Congress (I) Committee and he also claims to have been working in the election for Mahabir Paswan and to have reported the propaganda to Girish Narain Mishra at the District Board Dabangalaw, Sasaram, where Mahabir Pd. Singh, Durga Pd. Singh (P.W.21) and Ali Hussain (P.W.11) were present. Durga Pd. Singh (P.W.21), besides being a member of the Congress (I) Party he refers to the President of the District Congress (I) Committee as "my party President" is also one of the persons who reported about the propaganda to the D.C.C. President, and according to his evidence, as per advice of Mahabir Paswan, Ali Hussain (P.W.11) was sent to Sasaram Police Station. He has also admitted that he had supervised the election work of Mahabir Paswan. Md. Yakub (P.W.36) is the President of the Sasaram Town Congress (I) Committee. Though he deposed that he did not take part in the election campaign due to his illness, according to P.W. 21, he was one of the persons who was working for Mahabir Paswan in the election. As has been pointed out by the Supreme Court in Ram Awadhesh Singh's case (A.I.R. 1972 Supreme Court 580) "frank feelings generated during election contest even when the election is over". Though his evidence cannot be brushed aside on the ground of partiality, it is necessarily to be subjected to very strict scrutiny.

22. Ali Hussain (P.W.11) deposed that two days prior to the date of poll, Istafak, Mohammad Bartalla and Bachuk Prasad carrying green flag were propagating in Sasaram town



that Mahabir Paswan had withdrawn from the contest in favour of Sheonandan Paswan and they were also distributing a pamphlet of course, he deposed that he lodged a Sanhe at Sasaram Police Station on 4-1-1980 at 4 p.m. after reporting the fact to Mahabir Paswan and others, P.W. 18, Dasrath Dubey deposed substantially to the same effect. Durga Pd. Singh (P.W.21) also deposed substantially to the same effect except that instead of Buchuk Prasad, he named Jai Singh as the third person who was carrying on the propaganda. He stated that the propaganda was being made by the workers of Jagjiwan Babu through the workers of Lok Dal, I have already stated that the station diary entry made on the statement of Ali Hussain (P.W.11) has not been exhibited and when it was suggested to Ali Hussain that he did not mention in the station diary entry that the aforesaid propaganda was being made on behalf of Jagjiwan Babu, P.W.11 took refuge in failing memory. We can therefore, safely conclude that the station diary entry, if produced, would not have supported the evidence of these witnesses that the propaganda was being made on behalf of Jagjiwan Babu or by his workers. According to the election petition, the propaganda was carried on through the workers of Lok Dal who had been gained over by Jagjiwan Babu. Further, Durga Pd. Singh (P.W.21) claimed that he had noted the names of the persons and the contents of the propaganda on a page in his diary, but that has not been produced. None of these persons specifically stated that Istavak, Md. Bartalla and Buchuk were workers of Jagjiwan Babu or were the workers of Lok Dal who had been gained over by Jagjiwan Babu. As P.W.21 deposed that the propaganda was being made by the workers of Jagjiwan Babu through the workers of Lok Dal, it seems reasonable to conclude that according to him Istavak and Bartalla were the workers of the Lok Dal. There is no evidence that these workers were gained over by Jagjiwan Babu or that these workers were carrying on the propaganda at the instance of Sri Jagjiwan Ram or his workers. Their evidence is wholly insufficient to prove that the propaganda was made on behalf of Sri Jagjiwan Ram. Md. Yakub (P.W.36) named only Istavak who according to him was speaking to a microphone from a rickshaw carrying Lok Dal flag that Mahabir Paswan had retired in favour of Sheonandan Paswan. It is remarkable that he was not only able to tell the date on which he had heard this propaganda, but also the time as about 3.20 or 3.25 P.M., though he could not tell the date on which the Id festival was celebrated in 1979 or 1980. He also does not say that Istavak was a worker of Sri Jagjiwan Ram or was a Lok Dal worker who had been gained over by Jagjiwan Babu, nor does he deposed to any circumstance which would suggest that it was at the instance of Jagjiwan Babu or his worker that Istavak was carrying on this propaganda.

23. The next category of witnesses consists of P.Ws. 1, 2, 4, 12 and 19. P.W. 19, a member of the Bihar Legislative Council, deposed about this propaganda being carried on in Sasaram town. According to him the propaganda was being made by the workers of the Lok Dal carrying on green flag. His evidence does not, therefore, prove that the propaganda was being carried on on behalf of Jagjiwan Babu. On the other hand, his evidence discredits that story as it shows that the propaganda was being made by the workers of the Lok Dal, that is to say by the supporters of Sheonandan Paswan. Shoo Shanker Dwivedi (P.W.2) deposed that the workers of Jagjiwan Babu went around on a jeep carrying Lok Dal flag propagating that Mahabir Paswan had withdrawn in favour of Lok Dal candidate. But his evidence appears to be hearsay. In cross-examination he stated that he received oral information about the withdrawal of Mahabir Paswan at 8 or 10 A.M. On the 5th, apparently from Ali Hussain (P.W.11). It can, therefore, be used only to corroborate Ali Hussain (P.W. 11), whose evidence I have not found trustworthy. As I have already pointed out, he is not a partisan witness. He is an omnibus witness drawn from the change of the location of the booth's the fact that 200 to 300 vehicles were used by Jagjiwan Babu and also about distribution of articles and money by Jagjiwan Babu. I do not feel it safe to act on his testimony for the purpose of corroborating Ali Hussain's statement. Nuna Mian (P.W. 4) deposed about a propaganda of withdrawal of Mahabir Paswan from a jeep carrying Lok Dal flag and stated that this propaganda was being made on behalf of Jagjiwan Babu. As he does not give the names of the persons who were carrying

on the propaganda, his evidence that the propaganda was being made on behalf of Sri Jagjiwan Ram is virtually a guess. Gurish Naram Mishra (P.W. 12) also deposed that he heard it propagated that Mahabir Paswan had retired in favour of Sheonandan Paswan and added that the propaganda was made by the men of Jagjiwan Babu. He is the President of the Rohtas District Congress (I) Committee and admittedly worked for Mahabir Paswan in the election. He does not give the name of the persons who made the propaganda and his evidence that it was made by the men of Jagjiwan Babu may well be a mere guess and cannot be acted upon. I, therefore, hold that it has not been proved that the propaganda of withdrawal of Mahabir Paswan from the contest, assuming it was made, was made on behalf of or at the instance of Jagjiwan Babu. Further even if it had been possible for me to accept the evidence, which appears to be in the nature of guess, that the workers of Jagjiwan Babu had made the propaganda, it would not have been possible to hold that the aforesaid propaganda was carried on with the consent of Jagjiwan Babu, as it is nobody's case that Jagjiwan Babu himself carried on the propaganda, to invalidate the election on this ground, besides other things, the petitioner has to establish either that the propaganda was made with the consent of Jagjiwan Babu, or that the result of the election was materially affected by this propaganda of withdrawal of Mahabir Paswan. Learned Advocate for the petitioner was unable to point out any evidence in support of either of these two essential facts. Issue No. 5 must, therefore, be answered in the negative.

#### Issue No. 8

24. The case of the election petitioner regarding the commission of corrupt practice of undue influence falling under section 123(2) of the Act, as led before the Court, may be divided into two categories; (i) of what is popularly called booth capturing, that is to say, the genuine voters being prevented from going to the booth and the presiding and the polling officers being terrorised and some workers and supporters of respondent No. 1 entering into the booth, obtaining blank ballot papers from the polling staff and putting the seal against the election symbol of respect No. 1 and forging the thumb impression or the signature of the electors on the counter-foil of the ballot papers, and (ii) terrorising the voters and thereby preventing them from casting their votes, the result being that no votes were cast at several booths and negligible number of votes were cast at one polling booth.

25. I shall deal with the second category of corrupt practice of undue influence first. This species of corrupt practice of undue influence is alleged to have been committed in respect of polling station Nos. 80 to 87 of the Chainpur Assembly Constituency segment. According to the averments in the election petition, vide paragraph 33, the entire electorate of these polling stations was hostile to respondent No. 1 as this area was neglected and no development work done in that area as the respondent No. 1 did not do anything for the area, though the area formed part of the constituency which he represented. Respondent No. 1, it is alleged, with the help of his hired gundas and criminals created disturbance at all the aforesaid booths, going to the extent of snatching away four rifles of the armed party, in regard to which an information was lodged at Adhaura Police Station, and almost all the voters of the aforesaid eight polling booths fled away out of fear, with the result that only 92 voters were polled at booth No. 80 and no votes were polled at booth Nos. 81 to 87. The respondent No. 1 denied the allegations asserting that being a national leader he could not be partial to people in his own constituency and help the development work in his own constituency at the cost of other areas. The final result-sheet (Ext. 2) shows that 92 votes were cast at polling station No. 80 of the Chainpur segment, out of which the respondent No. 1 Shri Jagjiwan Ram polled 54, petitioner Mahabir Paswan polled 30, Sheonandan Paswan polled 2 and two other candidates polled 4 and 2 votes respectively, that at polling station No. 81, the total votes polled was 5, out of which the respondent No. 1, Sri Jagjiwan Ram, polled 4 and one another candidate polled one, and that at booth Nos. 82 to 87, no votes at all were polled. The result-sheet (Ext. 2), therefore, does show that negligible number of votes were polled at booth Nos. 80 and

81 and no votes at all were polled at the other booths aforesaid. But the petitioner has still to prove that the voters did not cast their votes because they were terrorised.

26. There is no legal evidence, either oral or documentary, in support of the case of the petitioner that the respondent No. 1 or his men terrorised the voters of those polling stations and, therefore, they did not cast their votes. The only evidence on the point on which the learned counsel for the petitioner relied is that of P.W. 1, who deposed in his examination-in-chief to the entire case made out in the election petition and specifically stated that men of Jagjiwan Babu did not allow a single voter to cast his vote at booth Nos. 81 to 87 and that he had obtained the help of a gang of criminals, including the dacoit Ramasis, and they snatched away our rifles of the armed forces. In cross-examination, however, he deposed that he had seen some of the incidents with his own eyes, and when he was asked to name those incidents, he deposed that he saw with his own eyes two incidents of booth capturing; one at Pusauli booth in Mohania constituency and the other at Panjrao booth in Ramgarh constituency. And when it was put to him that he did not witness with his own eyes any other incidents, he answered that it was not possible to see other incidents and added that he saw 200 vehicles being used in the election. The respondent No. 1 (R.W. 65) denied the allegation of scaring away the voters and examined R.W. 26, who deposed that people of various villages of the Korar area and the aforesaid polling station Nos. 81 to 87 falling in that area, namely, villages Kotchhawani, Bharain Kalan, Dherai, Basa, Sheonrampur and other villages held a meeting and decided to boycott the election and he also did not vote though he was a voter at a booth. Ext. 1(f), the diary of the Presiding Officer of polling station No. 80, situate in the Primary School, Naoa Jhoti, shows that no votes were polled at this polling station and it contains an endorsement by the Presiding Officer to the effect that between 8 A.M. and 4 P.M., no voter turned up to cast his vote and no unpleasant incident took place and that the polling agents named therein, including the polling agent of Sri Jagjiwan Ram, Sri Sheonandan Paswan and Sri Mahabir Paswan filed petitions stating that the villagers were boycotting the election as their necessary demands were not being met. I have held the Presiding Officer's diary to be a public document by my Order No. 99 dated 1-2-1984 and I now proceed to give my reasons for so holding. In my opinion, the Presiding Officer's diary is a document forming the act of a public officer of India and falls under section 74(1)(iii) of the Evidence Act and, therefore, a public document. It is not and cannot be disputed that Presiding Officer, who is appointed under section 26 of the Act and whose duty is laid down by section 27 of the Act is a public officer within the meaning of the expression as used in section 74(1)(iii) of the Evidence Act. It is also not disputed that under the Instructions issued by the Election Commission contained in the Hand Book of the Presiding Officers, he has to maintain a diary and enter therein the information required. That being so, it is clearly a document forming the act of a public officer. There is a discrepancy between the result-sheet (Ext. 2), which shows that 92 votes were polled at polling station No. 80, and the Presiding Officer's diary Ext. 1(f), which shows that no votes were polled. But in the absence of any allegation so far as these booths are concerned, that the ballot boxes were tampered with, I would prefer the result-sheet (Ext. 2) based on actual counting of the ballot papers in presence of the counting agents of the different candidates to the entry in the Presiding Officer's diary Ext. 1(f), especially as the learned counsel for the petitioner argued that the Presiding Officer's diary had not been filled up properly. But even if we exclude from consideration the averments in the Presiding Officer's diary regarding the filing of a petition that the villagers were boycotting the election and also the evidence of R.W. 26, as he admitted that he was not present at the meeting where the decision to boycott the poll was taken, the petitioner's case of undue influence at these polling stations must fail as there is no evidence to show that Sri Jagjiwan Ram or his men prevented the voters from casting their votes at the aforesaid booths.

27. Coming to the second category of undue influence of corrupt practice, though several other booths are alleged to have been captured, learned counsel for the petitioner pressed his allegation of capturing of polling in respect of the following booths only.

- (i) Ramgarh Assembly segment—Booth Nos. 32, 37, 38, 103 and 104;
- (ii) Chenari Assembly segment—Booth Nos. 38, 39, 40, 114, 115, 181, and 192;
- (iii) Mohania Assembly segment—Booth Nos. 67, 88, 95, and 134;
- (iv) Chainpur Assembly segment—Booth No. 40.

I shall take up the allegations boothwise.

Ramgarh Assembly Constituency—Booth No. 32

28. In support of the allegation of capturing booth No. 32 situate in the Primary School Isri, the learned counsel for the petitioner relied upon the evidence of P.Ws. 22, 35 and 43 and the result-sheet (Ext. 2). Ramayan Singh (P.W. 22), a resident of village Bandipur, deposed that after casting his vote at booth No. 16 in his village, he had gone to village Isri in course of some work and had come to Isri booth No. 32 also and he saw Jagjiwan Babu sitting in a long car and four or five persons getting down from one of the three jeeps which contained the members of his party. He further deposed that those four or five persons went inside the polling booth, got hold of the seal and began to stamp the polling papers therewith. He further stated that he did not find any voter at booth Shankat Tiwary (P.W. 35, an advocate, who according to his evidence was supervising the election campaign of Sri Mahabir Paswan, deposed that on the date of poll, he visited the booths at Isri, Baraora and Chakrain comprised in Ramgarh Assembly Constituency and had come to Isri Booth at about 10 A.M. and saw Sri Jagjiwan Ram talking privately with some of his workers and thereafter Jagjiwan Babu left the place, and shortly thereafter the persons with whom Sri Jagjiwan Ram had been talking drove away the voters from the booth forcibly, went inside the booth, took blank ballot papers and stamped them in favour of Sri Jagjiwan Babu. Sudhakar Tiwary (P.W. 43), the only other eye witness on the point, deposed that he had also come to Isri booth at about 10 A.M. on the date of poll and that he had seen Jagjiwan Babu talking with his workers at that place and leaving the place and after that his workers went inside the polling booth where voting was taking place, removed the voters, took the ballot papers from the Presiding Officer and themselves began to cast the votes, the voters having come out of the polling booth. Sri Jagjiwan Ram (respondent No. 1) examined himself as R.W. 65 and denied the allegations and maintained that on the date of poll, he remained throughout the day at Sasaram Insurrection Bungalow. On his behalf two voters of Isri Booth, namely, R. Ws. 36 and 37, were examined and they denied the incident of booth capturing and asserted that the polling at this booths was peaceful. The result-sheet (Ext. 2) shows that out of 822 voters allotted to Isri booth, 659 votes were polled, out of which 8 were rejected, and out of the remaining 651, the respondent Sri Jagjiwan Ram polled 619, the petitioner polled 16, respondent Sheonandan Paswan polled 7 and the remaining candidates polled 9.

29. The oral evidence in support of the case of capturing of Isri booth does not inspire confidence. Neither P.W. 32 nor P.W. 35 nor P.W. 43 was a voter at booth No. 32. Not a single voter of booth No. 32 has been examined to support the case of the petitioner that he was unable to cast his vote on account of the capture of Isri booth by the supporters of Sri Jagjiwan Ram. In Schedule VIII to the election petition, which gives the particulars of the corrupt practice at booth No. 32, names of five persons are mentioned in the column containing "Names of persons upon whom undue influence was committed" but not one out of these five persons has been examined by the petitioner and no explanation for their non-examination has been given. Further, Shankata Tiwary (P.W. 35) and Sudhakar Tiwary (P.W. 43) are admittedly partisan witnesses. Shankata Tiwary (P.W. 35) admitted that he was supervising the election campaign of the petitioner in the Ramgarh Assembly segment of the constituency. Ramayan Singh (P.W. 22) admitted that in Goresara, Sudhakar Tiwary (P.W. 43) was carrying on the election work on behalf of Mahabir Babu, that is to say, the petitioner. And I would prefer his testimony on the point to that of Sudhakar Tiwary (P.W. 43) who denied that he was working for Mahabir Babu at the election. Ramayan Singh (P.W. 22), though he



maintained that he had no personal interest in the election, cannot also be regarded as an independent witness. He admitted that on the 17th, the date of counting, he had told Mahabir Paswan at Sasaram regarding the incident at Isri booth and also the propaganda regarding his retirement which had been made. Obviously, he knew Mahabir Paswan well enough and was sufficiently interested in him to report the incidents. Further, there is a discrepancy in the account of the incident given by P. W. 22 and that given by P. Ws. 39 and 43. Both P. Ws. 35 and 43 categorically stated that it was only after Jagjiwan Babu left the place after talking to his workers that his workers went inside the polling booth and removed the voters from that place and stamped the blank ballot papers. Ramayan Singh (P. W. 22), however, maintained that though he saw the workers getting down from the jeep and going inside the polling booth, he did not find any voter at the booth and he had found Jagjiwan Babu sitting in a car. As he did not find any voters there, obviously they had been driven away, and if P. Ws. 35 and 43 are to be believed, they were driven after Jagjiwan Babu had left the place. Further the evidence of all these witnesses regarding the incident, except regarding the presence of Jagjiwan Babu, is very general. Some workers of Jagjiwan Babu drove away the voter and some stamped the blank ballot papers. Name of not a single worker of Jagjiwan Babu, who participated in booth capturing, has been stated by any of these witnesses, even though Scheduled VIII mentions, beside Sri Jagjiwan Ram, the names of four other persons of Isri in the column meant for the persons who had committed the corrupt practice of undue influence at booth No. 32. Further the story told by these witnesses is improbable. According to P.W. 22, the persons who had entered the booth were about four or five in number. There is no specific evidence that these workers were armed with deadly weapons. Even according to P.W. 22, though there was no armed force, there was a party of 3 or 4 persons armed with lathi posted at Isri booth. There is no evidence that the Presiding Officer was in collusion with Sri Jagjiwan Ram. In these circumstances, the story of capture of Isri booth seems improbable. Further, P.Ws. 22 and 43 are clearly chance witnesses. As I have already pointed out, P.W. 43 falsely maintained that he was not working for the petitioner in that election.

30. What makes it completely unsafe to accept the story told by the aforesaid witnesses is the absence of any written complaint before the authorities incharge of the election or the authorities incharge of the law and order regarding the incident of booth capturing which involves the commission of the offence at least of wrongful restraint of the voters. P.W. 35 was not only a person supervising the election campaign of the petitioner, but also an Advocate. He must, therefore, have known that booth capturing was a corrupt practice which would void the election and that a contemporaneous complaint regarding booth capturing would be an important circumstantial evidence in favour of the allegation of booth capturing. Still neither Shankata Tiwary (P.W. 35) nor Sudhakar Tiwary (P.W. 43) filed any application in writing regarding the incident at Isri Booth. Shankata Tiwary (P.W. 35) tried to explain away that omission by maintaining that he had orally reported the incident to the patrolling officer whom he had met and that officer had told him that he would take action. It is difficult to believe the story that the Advocate Tiwary would be content with this oral report and the oral assurance of the patrolling officer. Further, though P.W. 35 claims to have gone inside the polling booth, he cannot tell the name of the polling agent of Mahabir Paswan at Isri booth. As a person incharge of the election campaign, he is likely to know the name of the polling agent of Mahabir Paswan and as a lawyer, if he had witnessed the incident deposed to by him, it is expected that he would note down the name of the polling agent of Mahabir Paswan who would be an important and natural witness of the incident.

31. As I have already stated, besides the respondent No. 1 Sri Jagjiwan Ram (P.W. 65), two voters at the Isri Booth, namely, R.Ws. 36 and 37 denied the incident of booth capturing at the said booth and R.W. 65 maintained that he had not moved out of Sasaram on the date, R.Ws. 36 and 37 belong to the same caste as the respondent No. 1 Sri Jagjiwan Ram. In view of the cast, being an important factor influencing the voting in this part of the country

R.Ws. 36 and 37 may also be not regarded as independent witnesses. Further, the evidence of R.W. 65 that he remained at Sasaram inspection Bungalow throughout the day may not be accepted at its face value, specially in view of the non-mention of this fact in the written statement filed on his behalf. Further, the diary of the Presiding Officer of booth No. 32 (Ext. A) supports the case of the respondent No. 1 that voting at booth No. 32 was peaceful and no irregularity in voting took place there. But even if the aforesaid evidence adduced on behalf of the respondent No. 1 is excluded from consideration, the evidence of P.Ws. 22, 35 and 43 is not such as to inspire any confidence.

32. Learned counsel for the petitioner pressed the argument that though the oral evidence by itself may not establish the case of booth capturing at Isri booth, the result-sheet (Ext. 2) make it completely safe to accept the oral evidence in that regard. The result-sheet (Ext. 2), no doubt, shows, as I have already stated, that the respondent No. 1; Sri Jagjiwan Ram, polled 659 out of the 822 cast i.e. more than 90 per cent of the votes cast and that the votes polled by Mahabir Paswan (the petitioner) and Sheonandan Paswan (respondent No. 7), who were the candidates of the Congress (I) Party and the Janta (S) Party, that is to say, the Lok Dal Party, which were recognised All India Parties, were negligible. The polling of the abnormally high percentage, that is to say, over 93 per cent of the votes polled by one candidate coupled with the polling of negligible number of votes polled by the candidates of the recognised All India Parties at Isri booth does raise a strong suspicion regarding the capture of the said booth. The suspicion deepens when we find that in the entire Ramgarh Assembly segment of the Parliamentary Constituency, out of the total 59,647 votes polled, 938 votes were rejected, and Sri Jagjiwan Ram polled less than 43 per cent votes, namely, 25,596 votes, while the petitioner and respondent No. 7 together polled more than 49 per cent votes polled, that is to say, 15,584 and 14,907 votes respectively. As no explanation has been given for this abnormal high percentage of voting in favour of Sri Jagjiwan Ram and the negligible number of votes in favour of the petitioner and Sheonandan Paswan (respondent No. 7), I would even go to the extent of holding that this abnormal percentage of voting is prima facie evidence of capturing of booth No. 32 by the supporters of Sri Jagjiwan Ram. But a charge of corrupt practice like booth capturing must be proved beyond doubt. Polling of abnormally high percentage of votes cannot by itself be proof beyond doubt of the commission of corrupt practice of booth capturing. There may be special circumstance prevailing in the area covered by a particular booth which may enable a candidate to secure almost cent per cent votes. Therefore, such circumstance cannot be conclusive proof of booth capturing. In the absence of any satisfactory oral evidence of booth capturing, the allegation that booth No. 32 at Isri was captured on behalf of the respondent No. 1, Sri Jagjiwan Ram, much less at his instance cannot be held to have been proved beyond doubt.

#### Booth Nos. 36, 37 and 38

33. These three booths were all situate in village Baraora, within Ramgarh Police Station, as appears from the list of polling stations (Ext. B). Booth No. 36 was situate in the Middle School, Baraora, booth No. 37 in Primary School, Baraora and Booth No. 38 in Panchayat Bhawan, Baraora. The number of voters assigned to booth Nos. 36, 37 and 38 respectively were 951, 982 and 473, vide the list of polling stations (Ext. B). To prove the corrupt practice of capturing of these booths by the respondent No. 1 and his workers and supporters, the election petitioner relies on the result-sheet (Ext. 2) and the testimony of Bachan Pandey (P.W. 25) and Shankata Tiwary (P.W. 35). The result-sheet (Ext. 2) shows that at polling station No. 36, 668 votes were polled, out of which one was rejected and Sri Jagjiwan Ram got 540, Mahabir Paswan got 86, Sheonandan Paswan got 34 and the other candidates together polled 7 votes, that at booth No. 37, 500 votes were polled, out of which 4 were rejected, Sri Jagjiwan Ram polled 435, Mahabir Paswan polled 48, Sheonandan Paswan 11 and the remaining candidates together polled 2, while at booth No. 38, 396 votes were polled, out of which 3 were rejected, Sri Jagjiwan Ram polled 339, Mahabir Paswan polled 19, Sheonandan Paswan polled 31 and the remaining 4 votes were polled by

other candidates together. Bachan Pandey (P.W. 25), deposed that he came to the booths at Baraora, namely, booth Nos. 36, 37 and 38 and half an hour after he had reached that place, three or four cars of Jagjiwan Babu came near those booths and some people came out of those cars and drove away all the voters who had arrived there to cast their votes, got inside the polling booth and began to stamp the ballot papers. He did not identify any of the persons who got out of the cars and entered the polling booths. Sankata Tiwary (P.W. 35), who claims to be supervising the election campaign of the petitioner, deposed that from Isri booth, he came to Baraora booth and found Sri Jagjiwan Babu talking to his workers and, thereafter, leaving the place, and then his workers went inside the booths, drove away the voters and began stamping the blank ballot papers in favour of Sri Jagjiwan Ram. As P. W. 35 does not speak of any car containing the workers having arrived after Jagjiwan Babu had left Baraora, it is clear that according to him, the workers who capture Baraora booths were present when Jagjiwan Babu had come. Apart from the fact that both P. Ws. 25 and 35 are admittedly partisan witnesses, P. W. 25 admitted that he was a member of the Congress (I) Party and had worked for his Party during the election, there is a clear discrepancy between the account of the incident given by these two witnesses of the petitioner. According to P. W. 25, he was a member of the Congress (I) Party since 1976. It must be presumed that he knew Jagjiwan Babu by face. He does not speak about the presence of Jagjiwan Babu. According to his evidence, therefore, Jagjiwan Babu was not present at Baraora booths and had no talk with the workers. Though we may assume that the persons who got down from the cars and indulged in booth capturing were his workers, the evidence of P. W. 35, completely implicates Jagjiwan Babu. Further, P. W. 25 was a voter at a different booth, namely, at Sisaul and was not a polling agent at Baraora. Besides being partisan, P.W. 25 is also a chance witness. Moreover, the evidence of these two witnesses (P. Ws. 25 and 35) is completely vague and general. We are not told the name of even a single person who had captured those booths, nor the name of a single voter who was driven away from those booths. Though P.W. 25 came forward to depose that the cars from which the people who captured the booths had got out were of Jagjiwan Babu, admittedly he has no list of cars or motor vehicles of Jagjiwan Babu and he could not tell either the registration numbers of the cars or the names of the driver of those cars. His evidence that those cars belonged to Jagjiwan Babu, therefore, is not at all reliable. P. W. 25 was unable to give the name of the polling agent of Mahabir Paswan, the petitioner, at Baraora booths, nor the name of the polling agent of any other candidate, nor the names of the presiding officers or polling officers at Baraora booths. P. W. 35 was also unable to tell the name of the polling agents of Mahabir Paswan at Baraora booths. According to P. W. 25, Mahabir Paswan had polling agents at Baraora booth. Though the polling agents would have been a very competent and natural witnesses no polling agent of the petitioner at Baraora booths has been examined and no explanation for his non-examination has been furnished. Further, it appears from Schedule VIII that Jagannath Singh, Ramashankar Singh, Ramakant Tiwary and Ramdeo Tiwary were the persons upon whom the corrupt practice of undue influence was committed at Baraora booths, but none of them has been examined and no explanation for their non-examination has been furnished. Not a single voter of those booths has been examined to support the allegations. In these circumstances, even though the abnormally high percentage of votes were polled by the respondent No. 1 at the aforesaid booth Nos. 36, 37 and 38 ..... more than 85 per cent of the votes polled, is suggestive of booth capturing, ..... even if the evidence of denial of the allegations by the respondent No. 1 (R. W. 65) and R. W. 24, a voter at Baraora, who asserted that the voting at Baraora booths was peaceful and the circumstance that the presiding officer's diaries Exts. A/2 and A/3 of Parnara Booth Nos. 37 and 38 support the evidence of R. W. 24 are not taken into account, the evidence produced on behalf of the petitioner is wholly insufficient to prove beyond doubt the story of capture of booth Nos. 36, 37 and 38 at Baraora. The benefit of doubt must, therefore, go to respondent No. 1.

#### Booth Nos. 103 and 104

34. Booth Nos. 103 and 104 were both located in charprang Bwari Primary School Bwari Buzani Kot booth

No. 103 in the western portion and booth No. 104 in the eastern portion. The particulars of corrupt practice at this booth are not mentioned in the election petition. But as evidence has been adduced on the point, both by the petitioner and respondent No. 1, and it cannot be said that respondent No. 1 was taken by surprise. I have considered this incident of booth capturing also. The number of voters assigned to booth No. 103 was 1020 and to booth No. 104 was 1070, vide the list of polling stations (Ext. B). To prove the case of capturing of these two booths, the petitioner relies on the result-sheet (Ext. 2) and the testimony of P. Ws. 24 and 35. The result-sheet (Ext. 2) shows that at booth No. 103, 730 votes were polled, out of which 13 were rejected and Jagjiwan Babu got 703, Mahabir Paswan got 13 and one another candidate got one and the remaining candidates, including Sheonandan Paswan, got nil. At booth No. 104, according to the result sheet (Ext. 2), 717 votes were polled, out of which 17 were rejected, Jagjiwan Babu got 562, Mahabir Paswan 27, Sheonandan Paswan 90 and the other contesting candidates got the remaining valid votes. At booth No. 103, therefore, Sri Jagjiwan Ram got 96 per cent of the votes cast and the remaining candidates, including the candidate of the Congress (I) and the Lok Dal Party got negligible number of votes. At booth No. 104, Sri Jagjiwan Ram got 78 per cent of the votes polled and at least one of the candidates, Sheonandan Paswan, who got 90 votes, cannot be said to have polled negligible number of votes. The result-sheet (Ext. 2) is suggestive of booth capturing by workers and supporters of Jagjiwan Babu at booth No. 103, but not at booth No. 104. According to the oral evidence we find that Sankata Tiwary (P.W. 35) merely stated that in course of his supervision, he came to village Chaprang and found no voter at the booths, but he found some workers of Jagjiwan Babu present. Rest of his evidence being hearsay is not taken into consideration. Lallan Singh (P.W. 24) deposed that he had gone to booth Nos. 103 and 104 located in the Primary School at Nai Kot and he found that there were no voters present at the booths, and three or four persons carrying guns and rifles were standing and three or four outsiders, who were men of Jagjiwan Babu, were present inside the booths stamping the ballot papers. He admitted that he had worked for the election of the petitioner, being a member of the Congress (I) Party and, therefore, is a partisan witness. Naikot polling booths were about 5 and 8 miles from his village Sahuika, where his own polling booth was located, and he does not disclose why he had gone to the Naikot booth. He is, therefore, also a chance witness. Though he had canvassed for the election petitioner, admittedly he did not file any application in writing before the authorities regarding the booth capturing which in the natural course he ought to have done. He claims to have informed Mahabir Paswan about the incident. But the circumstance that no particulars in respect of these booths are given in the election petition, makes it difficult to accept his story that he had informed Mahabir Paswan. I would, therefore, place no reliance on the evidence of this witness who claims to be an actual witness to the booth capturing. The circumstance that Sri Jagjiwan Ram polled 96 per cent of the votes polled at booth No. 103, no doubt, in the absence of any explanation of the abnormally high percentage of voting in his favour, raises a strong suspicion and indeed may be regarded as prima facie proof of booth capturing but for reasons already given I am unable to regard that as the exclusive proof of booth capturing. Of course, there is no circumstance to establish that the capturing of booth was done with the consent of Sri Jagjiwan Ram. This instance of corrupt practice of undue influence must also be held to have been not prove, even if we exclude from consideration the evidence of R.W. 22, who deposed that he had cast his vote at booth No. 103 and saw voters standing in queue not casting their votes at that booth.

#### POLLING BOOTHS IN CHENARI ASSEMBLY CONSTITUENCY

##### Booth Nos. 114, 115, 180, 181 and 182

35. The allegations regarding all these booths are taken up together because much of the evidence is common. As appears from the list of polling stations (Ext. B), booth No. 114 was located in the Primary School, Niu, and the total number of votes assigned to that booth was 573. Booth No. 115 was located in village Nad at the Primary School, Nad,

and the total number of votes assigned to that booth was 761, while booth Nos. 181 and 182 were located in High School, Sadokhar, in the eastern and western part of the same respectively, and booth No. 182 was located in the Primary School, Sadokhar. The total number of votes assigned to booth Nos. 180, 181, and 182 was 672, 692 and 724 respectively. According to the result-sheet (Ext. 2), the votes polled at the aforesaid booths were as follows:

Booth No.	Total number of votes polled	No. of rejected votes	Votes polled by				Others
			Jaggiwan Ram	Mahabir Paswan	Sheonandan Paswan		
114	406	1	386	13	1		5
115	611	1	568	12	24		6
180	311	2	233	44	26		6
181	366	5	241	92	15		13
182	670	4	623	3	4		8

36. To prove his case of capturing of the aforesaid booths, the petitioner relied on the result-sheet (Ext. 2) and the testimony of P.Ws. 8, 9 and 40. Sardar Saxena (P.W. 8) deposed that he had worked for Mahabir Paswan in the aforesaid election and had gone to some booths, including the booth at villages Nad, Nilu and Sadokhar. He deposed that he had arrived at Nad booth at about 11 A.M. and he saw Suresh Kumar, son of Jagjiwan Babu and his friends driving the voters of that booth, one of whom was Uma Shankar. He further deposed that thereafter he came to Nilu booth at 12 A.M. and here also he saw Suresh Ram and his companions, armed with lathis driving away the voters, who included Nathuni Singh and Nathuni Sah. He further deposed that he reached Sadokhar booths at 12.45 P.M. and found that voting was not going at those booths and he learnt from one Basudeo Ram that he and another voter were driven away. As Basudeo Ram has not been examined, what P.W. 8 learnt from Basudeo Ram is clearly inadmissible. Hargovind Singh (P.W. 40) is the Mukhiya of Bokhari Biso Dohri Gram Panchayat and President of the Youth Congress (I) of Kudra Block and he substantially supports the story told by P.W. 8 about the activities of Suresh Ram, son of Sri Jagjiwan Ram at Nad and Nilu booths. According to him, Suresh Ram had come to Nad booth at about 11 A.M. with five or six persons in a car and that he called some people and spoke something to them and others, and 10 or 15 more persons came there and asked the voters assembled thereto go away, these voters fled away and five or six of them who were the workers of Jagjiwan Babu, entered the booths and started casting votes. According to him (P.W. 40), the voters who had fled away were Ashok Kumar, Awadhesh Lal Verma and Baijnath Ram. His further evidence is that after Suresh Ram left Nad, he (P.W. 40) followed his car on a motor-cycle and they both came to village Nilu and here also Suresh Babu and his companions spoke to some people present there expressing his unhappiness about the manner of voting, and then those people drove away all the voters, including Bishwanath Singh, Nathuni Singh, Nathuni Sah and Kamla Singh, and, thereafter, five or six of the workers of Jagjiwan Babu entered the booth and stamped the ballot papers 36-A. None of the voters who are alleged to have been driven from the booths at Nad and Nilu have been examined in support of the incident and no explanation has been given for their non-examination. Admittedly, both P.Ws. 8 and 10 are partisan witnesses and their evidence has to be viewed with caution. Further, they are admittedly chance witnesses. P.W. 8 is a resident of village Kachnath which, according to his evidence, is at a distance of 5 miles from Nad and 6 miles from Nilu. There is nothing to show that he was a voter at this booth. Apparently, he is not a voter at the booth. Hargovind Singh (P.W. 40) is also a resident of different village Bhookhari which, according to him, is at a distance of 25 kilometers from Nad and Nilu. He was a voter at a different booth, and claims to have come to villages Nad and Nilu after having cast his vote. P.W. 40 claimed that he had filed an application at village Nilu before the patrolling Magistrate regarding the irregularities committed at Nilu and at Nad, and further that he had given therein the names of the persons who had committed the aforesaid illegalities. That application has not been produced in Court and the non-production is suggestive of the fact that no such application was filed. P.W. 40 is a Mukhiya and according to his evidence, he is the person who had done the election propaganda as

well as the organisation of peaceful polling at the election on behalf of Mahabir Paswan, but still he is unable to tell either the name or the designation of the Presiding Officer or the polling agents at Nad or Nilu booth. His evidence, does not inspire confidence. The evidence of P.W. 8 also does not inspire confidence. Though a worker of Mahabir paswan in the aforesaid election, he was unable to state who were the polling agents of Mahabir Paswan at Nad and Sadokhar booths. Admittedly, he did not file any application regarding the incident witnessed by him before any authority. Further, he not only deposed about the incident of booth capturing at Nad and Nilu, he also deposed as eye-witness to the propaganda of withdrawal and the distribution of articles on behalf of Jagjiwan Bobu in the election. I cannot place any reliance on his evidence.

37. It is true that the result-sheet (Ext. 2) shows that Sri Jagjiwan Ram polled more than 95 per cent votes at booth No. 114 and a little more than 92 per cent votes at booth No. 115, and the petitioner and Sheonandan Paswan, who were candidates of All India Parties, received negligible number of votes. This abnormally high percentage of votes in favour of Sri Jagjiwan Ram, no doubt, raises a strong suspicion that his supporters had captured the booths and as Sri Jagjiwan Ram polled, according to the result-sheet (Ext. 2), less than 50 per cent of the total votes polled in the Chenari Assembly segment of the constituency, that is to say, 35,300 and odd out of 73,500 and odd votes polled, the abnormally high percentage of voting in his favour, in the absence of any explanation for the same, may even be prima facie proof of capturing of the booths by his supporters. I am not impressed with the argument on behalf of the respondent No. 1 that as at some polling stations, for example, polling station No. 152 in Chenari Assembly segment, Mahabir Paswan secured abnormally high percentage of votes polled, namely, 474 out of 480 and Sri Jagjiwan Ram obtained only 5 votes, and there is no allegation that polling booth No. 152 or other such booths on which Mahabir Paswan or Sheonandan Paswan secured abnormally high percentage of votes polled were captured, abnormally high percentage of votes cast in favour of a particular candidate is not a circumstance suggesting booth capturing by that candidate. Mahabir Paswan and Sheonandan Paswan also may have captured some booths. However, as I have already said, mere abnormally high percentage of voting in favour of a particular candidate cannot be regarded as proof beyond doubt of the booth capturing, and as the oral evidence in support of the allegation is highly unreliable, I am unable to hold that it has been established beyond doubt that booth Nos. 114 and 115 were captured by the supporters of Jagjiwan Babu or by his son. Further, on the evidence, booth Nos. 114 and 115 were captured at the instance of the son of Sri Jagjiwan Ram, namely, Suresh Kumar. There is no evidence that these booths were captured with the consent of Sri Jagjiwan Ram. The mere fact that the person at whose instance the booths were captured is his son, consent of Sri Jagjiwan Ram cannot be assumed. As pointed out in George Fernandes' case (A.I.R. 1969 Supreme Court 1201 at 1222). The law requires some concrete proof, direct or circumstantial, of consent, and not merely of knowledge and connivance, and though the consent need not be directly proved, the circumstances proved must point unerringly to the conclusion that the act was done with the consent of the candidate. No such circumstance has been established.

38. So far as booths at Sadokhar are concerned, the only oral evidence is that of P.W. 39, with such support as it receives from the circumstance deposed to by P.W. 8 that he found that the voting was not going on at Sadokhar booths when he reached there. P.W. 39, Ramasis Singh, deposed that he had gone to village Sadokhar a day prior to the date of poll to pay a visit to Ramsinghasan Singh, his relation, and had come to the place of polling at Sadokhar and found that at 12.30 P.M., Suresh Babu came there with his men and started driving away the voters from that place, and then those people of Suresh Babu cast all votes according to their sweet-will. He is obviously a chance witness. He did not say in the examination-in-chief as to why he had gone to village Sadokhar. He is the Mukhiya of Bhagwanpur Buxera Gram Panchayat and, therefore, a political person. But if he is to be believed, he returned to his village at 4 P.M. only and thereafter cast his vote, which is an improbable story. The only relationship that he claims with Ramsinghasan Singh is that his father's sister and Ramsinghasan Singh's sister are married in the same family. He is, therefore, a chance witness and his presence at the place

was rather improbable. He denied to have any special concern with any candidate at the election, but he supports the entire case of Mahabir Paswan, not only as regards the incident of capture of Sadokhar booths, but also regarding the propaganda of withdrawal of Mahabir Paswan and the distribution of articles from the side of Jagjiwan Babu. According to him, one of the voters, who was driven away from the booth was Basudeo Ram, but though according to him, Basudeo Ram is alive, Basudeo Ram has not been examined, and no explanation has been given for his non-examination. Admittedly, he did not file any information before any of the authorities regarding the incident, though he claims to have related the incident to his villagers and also to Mahabir Paswan on the date of counting. His evidence does not impress me. No polling agent of Mahabir Paswan, nor any voter at the aforesaid three booths at Sadokhar has been examined, though Schedule VIII, which gives the particulars of corrupt practice of undue influence at these and other booths mentioned in column 4, names of some of the persons on whom corrupt practice of undue influence was committed. The percentage of votes polled by Jagjiwan Babu at booth Nos. 181 and 182 is 74 per cent and 65 per cent of the total votes polled, and is not a circumstance suggestive of booth capturing. The percentage of votes polled by Sri Jagjiwan Ram out of the total votes at booth No. 180 is, no doubt, very high of 92 per cent, but in view of the unreliable nature of the oral evidence, I am not prepared to hold that it has been proved beyond doubt that booth No. 180 was captured by Suresh Kumar and other workers and supporters of Jagjiwan Babu. Here again, there is no evidence, direct or circumstantial, that the capture of booths was done with the consent of Jagjiwan Babu. I have already arrived at the conclusion that the allegation of booth capturing in regard to these booths has not been established on the basis of the evidence adduced on behalf of the petitioner alone. But besides Suresh Kumar, who has denied the allegation as R.W. 52, the other witnesses, namely, R.Ws. 2, 4, 6, 15 and 25 have also denied the allegation. R.Ws. 2 and 6 were voters at Nad booth, R.W. 40, a voter at Nilu booth and R.Ws. 15 and 25, were voters at Sadokhar booths. Their evidence has been criticised, but I do not propose to discuss their evidence. For, even if their evidence is excluded from consideration, the allegation of booth capturing cannot be held to have been proved. The Presiding Officers' diaries (Exts. A/16, A/17 and A/18) have also been exhibited on behalf of the respondent No. 1, and they show that the voting was peaceful. But even if the Presiding Officers' diaries are kept out of consideration, the allegation cannot be held to have been proved, and therefore I am not discussing at this stage these Presiding Officers' diaries.

#### BOOTH NOS. 38 AND 39

39. These two booths were situate in Middle School, Karup. The case of the petitioner regarding the capture of these two booths rests on the result-sheet (Ext. 2) and the testimony of Girish Narain Mishra (P.W. 12). The result-sheet (Ext. 2) shows that at polling station No. 38, out of the total 628 votes assigned to this booth (vide the list of polling stations—Ext. B), 570 votes were polled, out of which two were rejected and respondent No. 1, Jagjiwan Ram polled 557, that is to say, more than 97 per cent of the votes polled and the petitioner Mahabir Paswan got 10 votes, Sheonandan Paswan got no vote at all and the other contesting candidates got the remaining one vote. So far as polling station No. 39 is concerned, out of the 586 votes assigned to it, 510 were polled, out of which two were rejected, respondent No. 1 Jagjiwan Ram got 480, that is to say, more than 94 per cent of the votes polled, Mahabir Paswan got 24 and Sheonandan Paswan got the remaining 4. This abnormally high percentage of voting in favour of the respondent No. 1 and negligible number of votes polled by the other candidates of All India Parties, namely, the petitioner and Sheonandan Paswan, coupled with the absence of any explanation as to why at these two booths Sri Jagjiwan Ram got more than 90 per cent votes, whereas in the Chenari Assembly segment of the constituency, he got less than 50 per cent of the votes polled, is prima facie proof of booth capturing by the supporters of the respondent No. 1. But as I have said earlier, this cannot be conclusive proof beyond doubt of booth capturing. There is no other reliable evidence on the basis of which prima facie proof of booth capturing can be held to be proved beyond reasonable doubt. Not a single voter of these two booths has been examined in support of the case of the petitioner. Though according to the evidence of P.W. 12, at least one polling agent of Mahabir Paswan was present—P.W. 12 claims to

have asked him to lodge information about booth capture—not a single polling agent has been examined to support the case of the petitioner. The only witness on the point is Girish Narain Mishra (P.W. 12), the President, District Congress Committee (I), who admittedly was very active in the election campaign of the petitioner and is, therefore, a highly partisan witness. He claims to have passed through two polling booths of Sasaram Parliamentary constituency, one situate at Karup and the other at Pahari, on his way to Baramganj Parliamentary constituency on the date of poll. According to his story, he saw 5 to 7 persons, armed with rifles, standing outside the Karup booth and two persons stamping ballot papers inside the booth and dropping them into the ballot box and they were all men of Jagjiwan Babu. He further deposed that the polling agent of his candidate had been driven out, and when he complained to the Presiding Officer, he expressed his helplessness in the matter, and further that he complained to the patrolling party and also to the District Magistrate, who was the Returning Officer, on phone. Apart from the fact that he is a highly interested witness, the evidence of P.W. 12 is otherwise also unreliable. He proceeded in his cross-examination to give the names of 32 original booths whose location, according to him, had been changed on the eleventh hour due to the pressure exerted by Jagjiwan Babu and named 29, and thereafter said that those 29 were not the booths which were changed, but the booths which were not changed. Admittedly, he did not file any application in writing regarding the facts which he had seen. As the booth capturing is a serious matter and P.W. 12 was a responsible official of the party which had set up a candidate and was aggrieved, in the ordinary course, he should have filed an application in writing. Nobody would rest content with a report on telephone to the District Magistrate, as this witness claims to have done. Further, though he stated on oath that the men who were standing with rifles outside the booth or were stamping the ballot papers inside the booth at Karup were the men of Jagjiwan Babu, his evidence with regard to Pahari booth is also the same, he admitted in cross-examination that he did not know their names as they were hired people from outside. This shows that he has no compunction in drawing upon his imagination. He further maintained that the Returning Officer was in collusion with Jagjiwan Babu, but admittedly he did not file any application complaining about this collusion of the Returning Officer before any superior authority, which shows that his story of collusion of the Returning Officer is an after thought. Further, the election petition does not contain any specific averment that either the booths at Karup or at Pahari were captured. If this witness had actually seen those booths captured, it is unthinkable that he would not have reported about it to Mahabir Paswan, as he and Mahabir Paswan had consulted together and had gone together to the Returning Officer on the date of counting to complain about the delay in counting. And if Girish Narain Mishra (P.W. 12) had mentioned about the capture of the booths at Karup and Pahari, it is unthinkable that the election petitioner would not have made a specific averment in the election petition about the capture of the booths at Karup and Pahari. The non-mention of the story of capture of these booths at Karup and Pahari in the election petition is a strong circumstance showing that P.W. 12 did not find these booths captured, as deposed to by him in Court, and that his story to that effect is an after thought. P.W. 12, therefore, is a completely unreliable witness. The allegation of capture of these two booths cannot, therefore, be held to have been proved beyond doubt.

40. I should have mentioned that on behalf of the respondent No. 1, R.W. 33 was examined and he stated that the polling at Karup was peaceful. But even assuming that his evidence is completely unreliable, as contended by the learned counsel for the petitioner, the evidence adduced on behalf of the petitioner is not sufficient to prove beyond doubt the capture of Karup and Pahari booths. The respondent No. 1 is, therefore, entitled to the benefits of doubt in respect of this instance of corrupt practice also.

#### BOOTH NO. 40

41. This booth was located in village Pahari at Pahari Primary School. The case of the petitioner regarding capture of this booth rests on the testimony of Girish Narain Mishra (P.W. 12) and the result-sheet (Ext. 2). The result-sheet (Ext. 2) shows that out of the total 918 votes assigned to booth No. 40 (vide Ext. B), 731 votes were polled, out of which 5 were rejected. Sri Jagjiwan Ram got 573, that is to say, 78 per cent of the votes, both Mahabir Paswan and

Sheonandan Paswan got 75 and 74 each respectively and the remaining 4 were polled by the other contesting candidates. The inference of booth capturing arising from the heavy polling in favour of Sri Jagjiwan Ram, if any, is weaker as the polling was only 76 per cent and the number of votes polled by Mahabir Paswan and Sheonandan Paswan, though small, cannot be said to be negligible. The evidence of P.W. 12 in respect of this booth is the same as in respect of the booth at Karup. For the reasons given by me, his evidence is completely unreliable. The respondent No. 1 examined R.W. 34, who stated that the polling at Pahari booths was peaceful. His evidence may not inspire much confidence. But the evidence adduced on behalf of the petitioner is not such as to justify a definite finding of capture of this booth, much less to prove the allegations beyond doubt.

#### MOHANIA ASSEMBLY CONSTITUENCY SEGMENT Booth No. 67

Booth No. 67

42. Booth No. 67 of the Mohania Assembly constituency was located in the Primary School building at Jehanabad and the number of voters assigned to this booth was 633 (vide the list of the polling stations Ext. B). As appears from the result-sheet (Ext. 2), 604 votes were polled, out of which 4 votes were rejected and of the remaining 600 votes, Sri Jagjiwan Ram polled 462, petitioner Mahabir Paswan and Sheonandan Paswan 61 and 60 respectively, and the remaining 17 votes were polled by three other candidates together. Thus Sri Jagjiwan Ram polled 77 per cent of the total votes cast.

43. The case of the petitioner regarding the commission of the corrupt practice of undue influence at this booth rests on the testimony of P.Ws. 3, 30 and 34 with such support as it receives from the result-sheet (Ext. 2). Haridwar Singh (P.W. 3), a voter of booth No. 66, which was situate in the Jehanabad Middle School building, deposed that booth No. 67 was visible from booth No. 66, where he had gone to cast his vote and that there was disturbance at booth No. 67 and he found Jagjiwan Babu sitting in a car saying that all the voters at booth No. 67 were Congress (I) voters and that they should be assaulted and driven away, and then the voters were driven away from booth No. 67, and one of them was Ramjee Singh. Surendra Tiwari (P.W. 30) deposed that as a person who had worked for Mahabir Paswan at the aforesaid election, he had gone to various booths including the booths located in the Jehanabad Upper Primary School building numbered as booth No. 67 and that he saw Jagjiwan Babu arriving at the booth in a car accompanied by Munni Singh, a lawyer of Sasaram, that the polling agent of Jagjiwan Babu came out from inside the polling booth along with others and they had some talk with Jagjiwan Babu and, thereafter, some anti-social elements, armed with 'dandas', came to the place where he was assisting Ramji Singh in issuing identity slips to the voters and drove away the voters as also the persons issuing identity slips.

44. Ramji Singh (P.W. 34) supports the story told by Surendra Tiwari. He was a voter at booth No. 16 and was admittedly working for Mahabir Paswan in the said election. P.Ws. 30 and 34 are named in Schedule IX as the persons who were the victims of undue influence at booth No. 67 and Respondent No. 1 and Munni Singh, Advocate, are named as the persons who committed the corrupt practice. But Ramji Singh and Surendra Tiwari are admittedly partisan witnesses and their evidence must necessarily be subjected to strict scrutiny. Both these witnesses are witnesses not only to the commission of corrupt practice of undue influence but also to the propaganda of withdrawal of the candidature of Mahabir Paswan and distribution of articles to voters from the side of Jagjiwan Babu. P.W. 30 admitted that 'lathi force' had been deployed at each of the polling booths visited by him and, according to him, the people who scared away the voter, carried only 'dandas'. There is no evidence that they were present in overwhelming strength. In these circumstances, the story that the people wielding 'dandas' to drive away the voters seems to be improbable. Further, no contemporaneous document, in which the allegation of corrupt practice of undue influence was made, has been produced. Since both Surendra Tiwari and Ramji Singh were active workers of Mahabir Paswan one would expect them to file complaint before the Election Authorities as also before the authorities in charge of law and order. Surendra Tiwari has attempted to give an explanation. He

has stated that his party President Ramji Singh had given that applications to the Polling Officer and the Presiding Officer, but the applications were not accepted. He stated that an information was given to the Superintendent of Police and the District Magistrate also but they did not listen to him. The explanation offered by Surendra Tiwari is falsified by the evidence of Ramji Singh (P.W. 31), for, he stated that he did not file any application in writing before any authority in regard to the incident at booth No. 67 and that he did not think it necessary to lodge any information at the Police Station as he had informed the President of the District Congress Committee and his candidate. The District Congress President (P.W. 12), however, did not depose that any information regarding the incident at Jehanabad booth had been given to him. Neither Gurish Narain Mishra (P.W. 12) nor the candidate Mahabir Paswan (P.W. 1) claimed to have filed any application before any authority in regard to the incident at booth No. 67, Jehanabad. The evidence of P.Ws. 30 and 32 therefore, does not inspire confidence.

45. The testimony of Haridwar Singh (P.W. 3) also does not inspire confidence. P.Ws. 30 and 34 content themselves with saying that they saw Jagjiwan Babu having a talk with some persons but P.W. 3 goes to the extent of saying that he actually heard Jagjiwan Babu giving order to drive away the voters assembled at the booth. It is highly improbable that a private person like Jagjiwan Babu would give such an order publicly. Further, admittedly, he is a member of the Congress (I) party and though he maintained that he was not interested in the election of any of the candidates at that election, his statement to that effect cannot be accepted at its face value, for, he claims to have informed Mahabir Paswan about the incident. P.W. 3 also cannot, therefore, be regarded as an independent witness.

46. It is also remarkable that not a single witness, who was a voter at booth No. 67, has been examined to support the story of the voters being driven away. Even the Polling Agents of Mahabir Paswan, who according to P.W. 30, admittedly, were present, have not been examined to support this story. The contention that Sri Jagjiwan Ram polled 77 per cent of the total votes cast is not such as to make the evidence of these witnesses acceptable. Mahabir Paswan and Sheonandan Paswan obtained 60 and 61 votes, respectively, which cannot be said to be negligible. The allegation regarding the corrupt practice of undue influence at Jehanabad booth No. 67, therefore, cannot be held to have been established, much less established beyond doubt, even if there were no evidence to the contrary.

47. In this case there is evidence to the contrary. Sri Jagjiwan Ram (P.W. 65) specifically denied the allegation levelled against him and maintained that he did not move out of Sasaram Inspection Bungalow on the date of the poll. He is a highly partisan witness and as he did not categorically state in the written statement that he remained at Sasaram Inspection Bungalow throughout the day on the date of poll, his evidence may not be accepted at its face value. But in view of the unreliable nature of the testimony of the witnesses for the petitioner, it is difficult to hold that his evidence is false. The Presiding Officers' diary (Ext. A/8) also disproves the story of commission of the corrupt practice of undue influence, because if it is accepted on its face value, there was no incident of intimidation of voters or other persons (vide entries at page 19 of the diary). The diary has been criticised as not representing the true state of affairs, but even if the diary is left out of account, in view of the unsatisfactory nature of the evidence adduced on behalf of the petitioner, the allegation of corrupt practice of undue influence at booth No. 67 Jehanabad must be held not to have been proved beyond doubt.

#### Booth No. 134

48. This booth was located at the Primary School. Bareilly and the total number of voters assigned to this booth was 904 (vide the list of polling stations Ext. B). Out of the 480 votes which were cast at this booth, 4 were rejected, Jagjiwan Babu got 391, the petitioner 40, Sheo Nandan Paswan 39 and the remaining 5 voters went to another candidate. The case of the petitioner rests on the testimony of P.Ws. 16, 17, and 33 and the support that their evidence receives from the high percentage of polling in favour of Jagjiwan Babu.



49. Nankhu Yadav (P.W.16) came to have passed through Barej booth and to have seen a car carrying the workers of Jagjiwan Babu at the booth and to have heard the workers of Jagjiwan Babu talking that the voters should be driven away as they were voting in favour of the Congress (I) candidate, Shyam Narain Yadav (P.W.17) who, as already stated, claimed to be in charge of the election campaign of the Congress (I) Committee in four Assembly constituencies including Mohania, stated that he had gone barej booth and seen a car carrying Jagjiwan Babu standing at that booth and the voters being driven away. He further deposed that he found his polling agent weeping and 2 to 3 persons, who were the workers of Jagjiwan Babu, surrounding the booth. Shyam Sunder Gupta (P.W. 33), a resident of Darhwa and the President of the Congress (I) Committee of his Block, deposed that after casting his vote, he went to Barej booth and saw Jagjiwan Babu arrive there in a car. He further deposed that he saw 2 to 4 workers talking to Jagjiwan Babu and shortly thereafter Jagjiwan Babu drove away his car and met Shyam Narain Pandey there.

50. As is clear, none of these witnesses are voters of Barej booth. P. Ws. 17 and 33 are the workers of the petitioner. Therefore, their evidence has to be scrutinised very strictly. According to the particulars of the incident at Barej, mentioned in Schedule to the petition, at least three persons were the victims of the undue influence and among them is Shyam Narain Pandey. Admittedly, Sri Pandey was not a voter and nothing was done to him. The averment, so far as it relates to him, stands falsified by his evidence. The other persons mentioned are the petitioner (P.W.1) and Bhoodan Singh. Bhoodan Singh has not been examined and the petitioner (P.W.1) admitted in his cross-examination that he was not an eye-witness to any incident of booth-capturing except those at Pusauli and Panjrao. Not a single document has been produced which would show that Shyam Narain Pandey had made any complaint before the election authorities or the authorities in charge of law and order. He claimed to have complained the authorities and the authorities, according to him, expressed their helplessness saying that votes had already been cast. If this was true, he must have filed an application in writing to the superior authorities. Non-production of any document regarding any complaint made by P.W. 17 strongly suggests that he made no such complaint in writing and if he did not make any such complaint, it is difficult to believe that he witnessed any act of corrupt practice of undue influence. P.W.33 candidly admitted that he did not file any complaint. This circumstance makes it extremely unsafe to accept the evidence of these partisan and chance witnesses. Their evidence is also very vague except as regards the presence of Jagjiwan Babu. P.W. 16 also is a chance witness and his evidence is equally vague. No worker of Jagjiwan Babu is named by him. It is not possible to act upon such a vague testimony.

51. Though two persons, Ram Shanker Singh and Laxman Singh are clearly named in Schedule IX of the petition as the persons who committed the corrupt practice, none of these witnesses named them. Not a single voter of Barej booth has been examined to support the allegation. The votes polled by the petitioner at Barej booth was nearly ten per cent and though Jagjiwan Babu polled much larger number of votes, it cannot be said that the votes polled by the petitioner and Sheonandan Paswan were negligible. The votes polled in favour of Jagjiwan Babu are not so large as to raise any presumption of booth capturing. Thus, even if we leave out of account the evidence of R.Ws. 11 and 12 and the respondent No. 1 himself and the Presiding Officer's diary (Ext. A/15) which negative any incident at Barej, the evidence is not sufficient to prove, much less beyond doubt, the commission of any corrupt practice at this booth. Thus, this instance of corrupt practice has also not been proved beyond doubt.

Booth No. 95.

52. This polling station was located in the Primary School, Dasauti and the number of voters assigned to this booth was 647 (vide the list of polling stations Ext.B). According to the averments in paragraph 24 of the election petition read with Schedule IX to the petition, the Dasauti booth was one of the booths where respondent No.1 had gone and made arrangements for obstructing the voters from casting their votes with the help of the officials and hired Goondas and lathials and the voters were so obstructed. Though in Schedule IX to the election petition, the names

of 11 persons are mentioned in column 9 against this booth and booth Nos. 112, 113 and 134 as the victims of the undue influence, not a single person, much less any of the persons named in column 9 of Schedule IX, has been examined in support of the allegation of obstruction to voter at this booth on this point. The respondent No.1 (R.W.65) has denied this allegation and as already stated above, he has stated to the effect that on the date of poll, he was all along at Sasaram Inspection Bungalow. R.W. 18 stated that the voting at this booth was peaceful and the Presiding Officer's diary (Ext.A[11] also shows that the voting was peaceful.

53. The petitioner relies solely on the result-sheet (Ext.2) which gives the total number of votes cast and the number of votes secured by the individual candidate. The result-sheet (Ext.2) shows that the total number of votes cast was 380, out of which 5 were rejected, Sri Jagjiwan Ram got 248, the petitioner 50, Sheonandan Paswan 59 and the remaining 18 votes were polled by the other candidates put together. Thus, out of the total number of votes, Sri Jagjiwan Ram got 65 per cent, the petitioner about 13 per cent and Sri Sheonandan Paswan about 15 per cent, and the percentage of votes cast was a slightly more than 58 per cent of the total votes. No inference of obstruction of voters or of booth capturing can be drawn from these figures. The instance of corrupt practice of undue influence is also not proved.

Booth No. 88

53. This polling station was located in the Co-operative Godown, Ahinaura and the number of votes assigned to this booth was 1001 (vide Ext.B). The case of the petitioner rests on the testimony of P.W.17 and figures of polling at this booth contained in the result-sheet (Ext.2). Shyam Narain Pandey (P.W.17), who, as I have already stated, claimed to be in charge of the election campaign of the petitioner in four Assembly constituencies, including Mohania Assembly constituency, deposed that on the date of poll, he had come to the Ahinaura booth and found that there was no voter at the booth and that 10 persons had surrounded the booth and all the votes had been polled. He claimed to have reached the booth at 3.P.M. Apart from the fact that he is a highly partisan witness, his evidence is otherwise also unreliable. He made the incredible statement that he had been appointed election agent of Mahabir Paswan by the petitioner on the prescribed form but only for four Assembly constituencies. It is well known that only one election agent can be appointed by a candidate for the entire Parliamentary constituency. Further, if he is to be believed, all the votes had already been polled when he reached the booth. In this circumstance why should the people continue to surround the booth? According to the result-sheet (Ext.2), 530 votes were cast at this booth, out of which 5 were rejected, Sri Jagjiwan Ram got 430, the petitioner got 27, Shri Sheonandan Paswan got 62 and the remaining valid votes polled went to two other candidates. Thus, a little over 52 per cent of the total votes were polled and Sri Jagjiwan Ram got a little more than 81 per cent. The number of votes polled by Sheonandan Paswan cannot be said to be negligible as he secured more than 14 percent of the votes polled. Though the votes polled by Sri Jagjiwan Ram form a very high percentage of the votes polled, but it is not so high as by itself to raise a presumption of booth capturing. As the oral evidence on this point is virtually nil, the allegation of capture of this booth by the workers of Jagjiwan Babu at this instance cannot be said to have been established, much less beyond doubt.

53A. This is the conclusion on the rebutted evidence of the petitioner. But as a matter of fact, two voters of Ahinaura booth deposed as R.W.8 and R.W.16 and they specifically stated that the voting was peaceful. Therefore, commission of the corrupt practice of undue influence at this booth also must be held to be not proved.

#### CHAINPUR ASSEMBLY CONSTITUENCY SEGMENT

Booth No. 40

54. This booth was located at Primary School, Barari and the total number of voters assigned to this booth was 831 (vide Ext. B, the list of polling stations) (the figure '1317' after '1323' in Ext. B is obviously a mistake for the figure 1377). Though this booth is mentioned as one of the



booths which were captured by the respondent No. 1 or his men, no particulars of the corrupt practice in the shape of persons who committed the corrupt practice and on whom it was committed or the time at which it was committed have been mentioned, nor any oral evidence has been adduced. The petitioner relied only on the circumstantial evidence of the figures of polling contained in the result-sheet (Ext. 2). The result sheet (Ext. 2) shows that out of the total votes of 831, 680 were polled, out of which one was rejected, and out of the 679 valid votes, Sri Jagjiwan Ram got 673, the petitioner as well as Sheonandan Paswan got nil and the remaining 6 were polled by two other candidates together. This abnormal percentage of votes polled and secured by Sri Jagjiwan Ram would raise a presumption that the booth was captured by the supporters or workers of Jagjiwan Babu in the interest of the said respondent, but as complete absence of particulars and the oral evidence on this point would inevitably cause prejudice to the respondent No. 1, who adduced no evidence regarding the corrupt practice at this booth, I can not come to the conclusion that the commission of corrupt practice of undue influence at this booth has been proved. Of course, there is no evidence that the corrupt practice was committed with the consent of Jagjiwan Babu.

55. Thus, none of the instances of the corrupt practice of undue influence, alleged and relied upon by the election petitioner, has been proved beyond doubt. Issue No. 8 must, therefore, be answered in the negative and against the election petitioner.

Issue Nos. 9 and 10

56. These two issues are inter-connected and indeed Issue No. 10 is the specific instance of illegality in counting and scrutiny of ballot papers. They are, therefore, taken up together. According to the averment in the election petition on this point, the counting of the votes, which was scheduled to begin from 8 A.M. on 7-1-1980, commenced only at 12 A.M. because of non arrival of ballot boxes of the Chenari and Ramgarh Assembly Constituencies till 11 A.M. The counting done was not fair and impartial; more than 50,000 ballot papers counted as valid votes in favour of respondent No.1. did not bear the seal of the polling stations nor signature of the Presiding Officers. There is the evidence of P.Ws. 11 and 12 that counting of the ballot papers did not begin till 11 A.M. because the ballot papers of the Chenari and Ramgarh Assembly Constituencies were not received till then. But there is no evidence regarding tampering of the ballot boxes of these two Assembly constituencies. The only specific allegation of illegality is the improper acceptance of 50,000 unsigned and unsealed ballot papers in favour of respondent No. 1.

57. The only evidence on this point to which reference has been made in the course of argument is that of P.W.1, P.W. 12 and of R.W. 5. P.W.1, the petitioner merely stated that about 50,000 ballot papers, which neither contained the signature of the Presiding Officer, nor the seal of the booth, were counted as valid votes in favour of Sri Jagjiwan Ram in spite of the objection raised by the counting agents and claimed that he had filed a petition before the Returning Officer pointing out the aforesaid illegalities in counting, which he claimed to have annexed to the election petition. No such petition has been formally proved and exhibited. The petition annexed, to which reference has been made, is Annexure 5, a petition to the District Election Officer filed by the petitioner so far as the counting is concerned which merely states about the late arrival of the ballot boxes from Ramgarh and Chenari constituencies and alleges that several ballot papers did not bear the signature of the Presiding Officer. Even the number 50,000 mentioned in the election petition is not mentioned in the petition given to the District Election Officer, Rohtas. The allegation that the ballot papers did not contain the seal of the booths is completely absent. Even if the filing of Annexure 5 be deemed to have been admitted, because it has not been taken specifically denied in the written statement that such a petition was filed by the election petitioner, it does not assist the petitioner in proving his case of illegality in counting. The allegation regarding the improper acceptance of 50,000 votes is completely vague and general and no reliance can be placed on the allegation as deposed to by P.W.

1 or as contained in Annexure 5. Though he could not be expected to give the number of ballot papers, one would certainly expect the number of the polling booths at which such ballot papers were found to given P.W.1 also admitted that no report in writing was submitted to him by the counting agent. The evidence of Girish Narain Mishra (P.W. 12), the President of the District Congress Committee (1), Rohtas is equally vague and general being on the same lines as that of P.W. 1. That the petitioner was not serious about this allegation is clear from the fact that no application for inspection and scrutiny of ballot papers was filed on behalf of the petitioner. Without any inspection or Scrutiny, it is almost impossible to prove the charge of illegality in counting beyond doubt.

58. R.W.5 a counting agent of Jagjiwan Babu, denied the allegation of illegality in the counting and asserted that the counting was done correctly. But even without his evidence, the allegation of illegality in counting cannot be held to have been substantiated. As it has not been established that any illegality in counting was committed, the question of the result of the election having been materially affected does not arise. Issue Nos. 9 and 10 must, therefore, be answered in the negative and against the election petitioner.

Issue No. 11

59. The decision of this issue involves the determination of two questions—(i) whether there was any non-compliance with the provisions of the Constitution or of the Act or of any Rules or Orders made under the Act, and (ii) whether the aforesaid non-compliance, if any, materially affected the result of the election. Shri Sharma, the learned counsel for the petitioner, was unable to point out any non-compliance with the provisions of the Constitution. So far as non-compliance of the provisions of the Act is concerned, it is urged that there was non-compliance with the provisions of section 25 of the Act and the Rules and Orders made under the Act and of directions issued by the Election Commission in exercise of its general powers of superintendence of conduct of election conferred upon it by Article 324 of the Constitution. Section 25 of the Act runs thus :

"25. Provision of polling stations for constituencies—The district election officer shall, with the previous approval of the Election Commission, provide a sufficient number of polling stations for every constituency the whole or greater part of which lies within his jurisdiction, and shall publish, in such manner as the Election Commission may direct, a list showing the polling stations so provided and the polling areas or groups of voters for which they have respectively been provided."

It is urged that after the District Election Officer, that is to say, the District Magistrate, Rohtas, who was also the Returning Officer, had with the previous approval of the Election Commission published the lists showing the polling stations and the places where they were located, at the instance of Sri Jagjiwan Ram, the District Election Officer changed the location of 32 polling stations hardly a few days before the date of actual poll and that respondent No. 1, Sri Jagjiwan Ram, had got the change in the location of the booths made to make it convenient for him to capture the said booths. It is also alleged that the fact of change of the polling station was not published among the electors as required by law and the petitioner received information regarding the change only on 10-1-1980 after the election. It was alleged that the letter containing the information was sent to the home address of the petitioner though he had election camp office at Sasaram. The aforesaid allegations are contained in paragraph 12 of the election petition. A copy of the letter (Annexure 1) along with the list of polling stations (Annexure 1/A) has been annexed to the election petition. No documentary evidence which would establish the change of booths has been brought on the record. It was, however, contended on behalf of the petitioner that the averment in paragraph 12 of the election petition that the location of 32 booths was changed was not specifically denied in the written statement and therefore, it must be deemed to have been admitted. In his written statement, respondent No. 1

said that the allegation that respondent No. 1 got the location of 32 polling stations changed with the help of the District Magistrate to suit his convenience with the purpose to obtain bogus votes was incorrect, that he had nothing to do with the minor changes made by the Returning Officer with the approval of the Election Commission in the location of some of the booths as alleged by the petitioner. Respondent No. 1 also alleged that change were made due to increase in the number of electors after the finalisation of the electoral roll and the changes made were duly published in accordance with law. Annexure 1/A to the election petition, which is alleged to contain the list of polling stations the location of which was changed, contains two lists; one containing six columns headed respectively (i) number of the polling station, (ii) place of the polling station, (iii) building in which the polling station is located, (iv) number of police station, (v) village and (vi) serial number of voters. The other list which contains the number of only one polling station of Chainpur Assembly Constituency Polling Station No. 20 contains columns 1 to 4, which are headed (i) number of polling station, (ii) place where the polling station was formerly located, (iii) amended place of the polling station, and (iv) place where the polling station would be established. It would thus prima facie appear that the location of only one booth has been changed which is in the second list and the location of 31 booths was not changed. But I will assume for the purpose of this case that it has been established that the location of 32 booths was changed.

60. It is not disputed that the duty of the District Election Officer to provide sufficient number of polling station which necessarily carries with it the power to determine the location of the booths, can be performed from time to time and the District Election Officer may change the location of the booths provided the change is made with the previous approval of the Election Commission and is duly published. No contravention of the provision of section 25 of the Act is established, therefore, merely by the change in the location of the booths. The contravention can only be established if it is proved that the changes were made without the previous approval of the Election Commission or that they were not published in such manner as the Election Commission may direct or that the change was mala fide. It is not disputed that the onus of proving the contravention lies on the election petitioner. There is no specific averment in the petition that the change was made without the previous approval of the Election Commission. The letter (Annexure 1) to the election petition recites that the partial change in the list of booths was made with the prior approval of the Election Commission. The election petition also does not assert that the prior approval of the Election Commission for the change of booths had not been obtained and though P.W. 12 makes such a statement, I need not discuss that because the learned counsel for the petitioner did not argue that the previous approval of the Election Commission to the change had not been obtained. The plea of the order of change of the booths being mala fide, assuring that it is raised in the election petition, has not been established.

61. Though the election petitioner (P.W. 1), P.W. 2, P.W. 12 and P.W. 19 deposed that the location of the booths had been changed at the instance of Sri Jagjiwan Ram, none of that evidence is admissible, or at least the evidence is not reliable. P.W. 1 deposed that he got that information from Sheo Shankar Dwivedi (P.W. 2) and P.W. 2 deposed that this information regarding the change at the instance of Sri Jagjiwan Ram had been brought to him by Prem Kumar Shahabadi and Ali Hussain. Later on he maintained that some workers of Sri Jagjiwan Ram had told him so. Prem Kumar Shahabadi has not been examined. Ali Hussain (P.W. 11) did not depose to this fact. The evidence of P.W. 1 and P.W. 2 to the effect that Jagjiwan Babu had got the location of the booths changed is completely hearsay and inadmissible. P.W. 12 deposed that Jagjiwan Babu had got the location of the booths changed by influencing the Returning Officer, but his is a bald assertion. He does not say that he learnt that from Sri Jagjiwan Ram. His evidence on the point is completely unreliable. P.W. 19 merely stated that he had heard that the location of booths had been changed. Apart from being hearsay, he does not even say that it was changed at the instance of Jagjiwan Babu. It must, therefore, be held that it has not been established

that the change of the booths was made at the instance of Jagjiwan Babu. Annexure 1 recites that the change of booths was made because of increase in the number of voters after final publication of the electoral roll. That the change in the location of booths was mala fide has not, therefore, been established.

Shri Sharma has, however, strongly contended that the change in the location of booths was not duly published. He drew my attention to the Instructions contained in paragraphs 11, 12 and 13 of the Handbook for Returning Officers issued by the Election Commission of India, 1979 Edition. Paragraph 11 of the Instructions requires that modification in the list of polling stations should be reported to the Commission for approval and after the lists are approved, request for change should be considered only when there are overriding considerations of public convenience. Instructions in paragraph 12 are to the effect that changes to be made should be referred to the Commission for prior approval and should be fully publicised and all the contesting candidates and political parties should be informed in writing. Instructions contained in paragraph 13 requires that three copies of list of polling stations for the constituency should be supplied, free of cost, to the contesting candidates and copies should be made available for sale at the price fixed. It is clear that the provision regarding supply of copies is with regard to the list of polling stations and not the list of polling stations in respect of which there has been a change. It is not disputed that the prior approval of the Election Commission had been obtained for the change. There is no evidence that it had not been publicised. The only evidence is to the effect that the letter informing Mahabir Paswan, the Petitioner, about the change was sent to his home address and he could not know of the change in time. The letter (Annexure 1) is dated 1-1-1980 is not disputed. The date of poll was 6-1-1980. Admittedly, the letter (Annexure 1) was sent to his home address Bajitpur, P. S. Poonpoo, in the district of Patna. In the ordinary course, the letter (Annexure 1) should have been received in Poonpoo in his home by the 4th or 5th January 1980, if it was posted on the 2nd January, 1980. Though Mahabir Paswan (P.W. 1) states that he received the letter only after the poll, he does not state when this letter was actually delivered at his home. He admittedly got that letter and that letter should have been produced in support of his evidence that he received the same after the declaration of the result. He has not given any explanation for the non-production of that letter. Adverse inference may be drawn for the non-production of the said letter and, in my opinion, it should be held that the letter (Annexure 1) reached his village home by the 4th or 5th January, 1980. Further, though in his examination-in-Chief the petitioner (P.W. 1) deposed that he did not know about the change, in cross-examination he admitted that Sheo Shankar Dwivedi had told him about the change a day or two prior to the date of poll. Therefore, on the evidence of the petitioner he knew about the change of the location of the booths prior to the date of the poll, though not officially. No evidence has been adduced on behalf of the respondent No. 1 that he was informed in writing about the change in the location of the booths. On the evidence on record, I think the probabilities are that information in writing about the change in location of booths did not reach the petitioner prior to the voting and I will proceed on that footing. To that extent it may be held that the change in the location of the booths was not published in the manner directed by the Election Commission, and there was thus a contravention of the provision of section 25 of the Act.

63. To succeed on this ground of contravention, the petitioner must prove not only contravention, but also that the result of the election was materially affected by this non-compliance or contravention. No evidence has been led on this point. It must, therefore, be held that it has not been established that the result of the election was materially affected by the non-compliance of the provision of section 25 of the Act.

64. It is next contended on behalf of the petitioner that in the conduct of the election there was non-compliance with

the instructions to the Presiding Officers of the various polling station issued by the Election Commission regarding the maintenance of the Presiding Officer's diaries: It is common ground that the instructions issued to the Presiding Officers by the Election Commission required them to maintain and fill up the Presiding Officer's diaries containing particulars mentioned in the instructions and the Presiding Officer's diaries are to be forwarded to the Returning Officer. Instruction Nos. 60 and 69 of the Handbook of the Presiding Officers may be referred to in this connection. I will assume for the purpose of this case that the non-compliance with these instructions also falls within section 100(d)(iv) of the Act, and that if the non-compliance with these instructions materially affected the result of the election, the election may be declared void on that ground. The diaries of the Presiding Officers of polling station Nos. 18 and 117 (Exts. 1 and 1/b) are virtually blank and were not signed by the Presiding Officer. All columns except columns 1 to 5 and 9 of Ext. 1 and all columns except columns 1 to 6 of Ext. 1/b are blank. The Presiding Officer's diary of booth No. 134 (Ext. 1/i) of Bhabhua Assembly Constituency segment has not been signed by the Presiding Officer and several columns are blank, but certain columns including the column prescribed for recording the number of votes cast, i.e., column 17 have been filled up. The Presiding Officer's diary of booth No. 153 of Bhabhua Assembly Constituency (Ext. 1/k) also does not bear the signature of the Presiding Officer and all its columns after column 5 are blank. There are other defects or omissions in other Presiding Officer's diaries. But in view of the conclusion at which I have arrived, it is not necessary to burden the judgement with enumeration of those defects. The non-compliance of the instructions regarding filling up of the Presiding Officer's diaries would invalidate the election only if it is proved that the non-compliance has affected the result of the election.

Shri Sharma, the learned counsel for the petitioner, was unable to point out how the failure to fill up the Presiding Officer's diaries materially affected the result of the election. It must, therefore, be held that the result of the election was not materially affected by non-compliance of the instructions relating to the Presiding Officer's diary which has to be filled up at the time of or immediately after the poll and which contains record of events regarding the poll. In the election petition it is alleged that the Presiding Officer of various booths, detailed in paragraph 30 thereof, did not submit an account to the Returning Officer mentioning the number of ballot boxes received by him and the number of ballot boxes used at the polling station. There is no evidence that the Presiding Officer did not report to the Returning Officer the number of ballot boxes received by him. There is no column in the Presiding Officer's diary which requires him to mention the number of ballot boxes received by him. So far as the omission to submit an account of the number of ballot boxes used at the polling station by the Presiding Officer, that has to be mentioned in column 6 of the diary, and column 6 of various Presiding Officer's diaries is undoubtedly not filled in and there has been a failure to comply with the instructions to that extent. But here again the learned counsel for the petitioner was unable to show how this omission had affected the result of the election.

66. It is next contended that the Returning Officer failed to comply with the directions of the Election Commission forwarded under circular No. 64 of 1979 dated 28-11-1979 of the Election Commission issued under the signature of its Under Secretary. The contravention alleged is of the provisions of the directions contained in paragraphs 5 and 6 of the direction. In paragraph 5, the Returning Officer is directed to scrutinise the ballot paper accounts and the Presiding Officer's diary in respect of each polling booth immediately on the deposit, and if finds an unusual and abnormal percentage of voting at a particular polling booth or unbelievable number of votes cast in any hour of the polling hours, or receive a subsequent report about the irregular or mal-practice at the election made by the Presiding Officer, the Returning Officer is directed to report the matter to the Chief Electoral Officer and the Election Commission for the decision of the Commission and is required not to open the ballot boxes of those polling booths. Admittedly, there is no report by the Presiding Officer and the learned counsel for the petitioner was unable to point out that there was an abnormal percentage of polling at any

particular booth or unbelievable number of votes cast in any hour of the polling hours. No contravention of the provisions of paragraph 5 of the direction has, therefore, been made out.

67. The provisions of paragraph 6 of the direction which also are said to have been contravened are that if the Returning Officer notices uncommon features in respect of any polling booth like appreciable number, namely, 5 per cent or 10 per cent of the ballot papers, of those booths not containing the signature of the Presiding Officer or the distinguishing mark of that polling booth, he shall report the matter to the Election Commission and the Chief Electoral Officer and not declare the result of the election in that constituency till the orders of the Election Commission are communicated to him. It has not been proved that 5 per cent or 10 per cent of ballot papers taken out of the ballot boxes used at any polling booth did not contain the signature of the Presiding Officer or the distinguishing mark of that polling booth. It, however, appears from the result sheet that a very high percentage of the total votes cast were cast in favour of the respondent No. 1, the number of the booths and the number of votes polled by respondent No. 1 and the petitioner are mentioned in Annexure 7 to the election petition, and the figures of votes polled, given therein, it is not disputed, tally with the figures contained in the result sheet (Ext. 2). It appears from the result-sheet (Ext. 2) that at booth Nos. 32 to 37, 38, 103, 148 and 149 of Ramgarh Assembly Constituency, booth Nos. 40, 97, 99, 44, and 119 of Chainpur Assembly, Constituency and booth Nos. 4, 38, 39, 43, 67, 76, 89, 100, 114, 115, 135, 177, 178 and 182 of Chenari Assembly Constituency, the votes polled by respondent No. 1 were 85 per cent or more, going up in one constituency to 99 per cent of the total votes polled and the votes both of the petitioner and Sheonandan Paswan, who are candidates of recognised All India Parties, were almost negligible. This is certainly a uncommon feature within the meaning of the expression as used in paragraph 6 of the instructions aforesaid, for, the directions were issued with a view to eradicate the evil of booth capturing, and this kind of voting raises a suspicion of booth capturing as is recognised by the Election Commission itself and its subsequent directions issued under Circular letter No. 64 of 1980 dated 5th May, 1980. There has, therefore, been non-compliance with the directions, for, it is not disputed that no such report was made by the Returning Officer and he declared the result of the election after taking into account the votes polled at the aforesaid polling stations also. This failure amounts to a non-compliance with the provisions of section 66 of the Act which requires the Returning Officer to declare the result after the counting in the absence of the direction of the Election Commission to the contrary. By necessary implication section 66 prohibits the Returning Officer from declaring the result when there are directions of the Election Commission to the contrary.

67A. However, it is not enough for the petitioner to show that there has been a non-compliance with the provisions of section 66 of the Act. It must further be established that it has materially affected the result of the election. The onus to prove that the non-compliance materially affected the result of the election is clearly upon the election petitioner. Now, the directions merely stated that the declaration of the result shall await the orders of the Election Commission. They do not say that re-poll would be ordered by the Election Commission and the result would not be declared even later. Can it be said that the Election Commission in all reasonable probability must have ordered a re-poll of these polling booths? In my opinion, it cannot be so held. The total number of votes polled by the respondent No. 1 at the aforesaid polling booths specified in Annexure 7 where he polled more than 85 per cent or more of the votes polled is 12,711 and the votes polled at those polling stations by the nearest rival the petitioner is 759. Even if the votes of these booths are excluded from consideration, or even if it is assumed that in a re-poll, all these votes of these polling booths would have gone to the petitioner, the respondent No. 1 would still have been declared elected. In such a situation, we can reasonably assume that the Election Commission would not have directed a re-poll at these booths. I may point out that in the subsequent directions issued under

circular No. 64 of 1980 dated the 5th May, 1980, the corresponding instructions are to the effect that even if abnormal percentage of voting in favour of a particular candidate is found at a particular booth, the Returning Officer may declare the result, if the result of the election is not affected by ignoring those votes and that the declaration of the result should be postponed only when he finds that the difference of margin between the first two candidates is less than the total votes polled in that polling booth or polling booths. I, therefore, hold that the result of the election has not been materially affected by the non-compliance with the provisions of the Constitution, the Act or the Rules or orders made thereunder. Issue No. 11 is, therefore, answered accordingly.

Issue No. 12

68. In view of my findings, the petitioner is not entitled to any relief. It is, accordingly, ordered that the election petition be dismissed; but in the circumstances of the case, without costs.

69. Let the substance of the decision be communicated to the Election Commission and the Speaker of the Lok Sabha immediately and let an authenticated copy of the decision be sent to the Election Commission as soon as possible.

Sd. Shivangrao Narain

By order,

R. P. BHALLA, Secy. to the  
Election Commission of India

Patna High Court,

The 26th November, 1984.

नई दिल्ली, 12 फरवरी 1985

आ. अ. 8.—लोक प्रतिनिधित्व अधिनियम, 1950 (1950 का 43) की धारा 13क की उपधारा (1) द्वारा प्रवृत्त शक्तियों का प्रयोग करते हुए, भारत निर्वाचन आयोग लक्षद्वीप प्रशासन के परामर्श से श्री ए. सुब्बाराया पिल्लै के स्थान पर श्री आर. ए. आरमुघम, सुप्रिन्टेंडिंग इंजीनियर, लक्षद्वीप पब्लिक वर्क्स डिपार्टमेंट कावारात्ति को उनके कार्यभार सम्भालने की तारीख से श्री ए. सुब्बाराया पिल्लै की अनुपस्थिति के दौरान में प्रशासन के मुख्य निर्वाचन अधिकारी के रूप में एतद्वारा नामनिर्दिष्ट करता है।

श्री ए. सुब्बाराया पिल्लै अपना छुट्टी से वापसी आने पर पुनः लक्षद्वीप प्रशासन के मुख्य निर्वाचन अधिकारी का कार्यभार सम्भाल लेंगे।

[सं. 154/लक्षद्वीप/85]

आदेश से,

वी. के. राव, सचिव

New Delhi, the 12th February, 1985

O.N. 8.—In exercise of the powers conferred by subsection (1) of section 13A of the Representation of the People Act, 1950 (43 of 1950), the Election Commission of India, in consultation with the Administrative of Lakshadweep hereby nominates Shri R. A. Arumugham, Superintending Engineer, Lakshadweep, Public Works Deptt. Kavaratti, as the Chief Electoral Officer for the Union Territory of Lakshadweep with effect from the date he takes over charge during the period of absence of Shri A. Subbaraya Pillai, IAS on leave.

Shri Subbaraya Pillai will take over as the Chief Electoral Officer of Union Territory of Lakshadweep on return from leave.

[No. 154/LKD/85]

By order,

V. K. RAO, Secy.